Supreme Court, U.S.
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No.

In The

SUPREME COURT OF THE UNITED STATES

Polar Equipment Inc., d/b/a Cook Inlet Processing, Inc., and Nautilus Marine Enterprises, Inc.,
Petitioners

v.

Grant Baker, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In violation of their fiduciary duties, and thus this Court's decision in *Exxon Shipping Co. v. Baker*, 128 S.Ct 2605 (2008), Class Counsel/Plaintiffs' Committee have repeatedly discriminated against two businesses, fish processors, vested stand alone class members Cook Inlet Processing, Inc. ("CIP") and Nautilus Marine Enterprises, Inc. ("NME"), intending to "squeeze out" CIP and NME, to keep greater shares of the Exxon Qualified Settlement Fund ("EQSF") punitive damages proceeds "pie" of $1, 105, 689,467.82, with the lion's share for their own contingency fee fishermen clients. They initially did so by using the 1989/1990 partial releases, "cede back" agreements, between Exxon and CIP and NME to effectively eject them from the plans of allocation and distribution as to the "matrix" for proceeds "collected by" Class Counsel/Plaintiffs' Committee. However, Class Counsel/Plaintiffs' Committee disingenuously ignored and forgave the same releases, "cede backs", as to their own fishermen clients, while maintaining their own fishermen clients' take under the "matrix".

In 2003 a settlement was reached with Class Counsel/Plaintiffs' Committee as to such discrimination, by which CIP and NME officially withdrew from the Joint Prosecution and Sharing Agreement to become stand alone class members entitled to fully receive and retain all proceeds of their *Robins Dry Dock* compensatory damage claims with Exxon, with the expressly preserved right to "eat what they kill" in reaching any deal with Exxon as to their compensatory damages claims, including re-obtaining previously conveyed "cede back" rights

as to punitive damages proceeds as part of settlement of same. In 2006, "on the eve of jury trial", CIP and NME settled with Exxon as to those claims, and the settlement proceeds included rescinding the 1989/1990 releases, reassigning and restoring the "cede back" rights to CIP and NME, to wit: 5% of punitive damages proceeds (i.e., $45 million). Said $45 million as to CIP's and NME's claims is currently reserved for same in the EQSF.

Significantly, Class Counsel/Plaintiffs' Committee continue to discriminate against CIP and NME, "squeeze them out" and refuse to honor their vested rights to those funds, thereby shifting that $45 million to other class members, to a large part their own contingent fee clients. This is not only a violation of CIP's and NME's rights, but a clear conflict of interest as to the fiduciary duties owed by Class Counsel/Plaintiffs' Committee to stand alone class members CIP and NME.

Thus, the questions presented for review are:

1. May a federal court and class action counsel, consistent with Due Process, Right to Jury Trial and Equal Protection, and their fiduciary duties under Rule 23 of the FRCP and IRC §468B, and the law of settlements, constitutional rights of plaintiffs to receive the "fruits" of their causes of action, and the law of "commercial paper", discriminate against and "squeeze out" certain vested fish processor businessmen class members by allowing certain fisherman members (to wit: the contingent fees clients of Class Counsel) of a mandatory punitive damage class in a

maritime case to receive more than their share of a 1:1 pro rata ratio of their compensatory damages to punitive damages awarded to the entire class, and refuse to disburse any punitive damages to other vested businessmen members of the class, despite said stand-alone businessmen members 5% share of aggregate collected compensatory damages (given their devastating financial losses from a mass tort at sea) and such stand-alone members' status as holders in due course, for valuable consideration, of "commercial paper" i.e., "cede back" rights as to that 5 %, who are entitled, under the law of the case, to collection and disbursement "off the top" of said funds to be "collected by" Petitioners in a similar fashion to other "off the top" beneficiaries?

2. Did the Ninth Circuit and District Court err in holding stand-alone plaintiffs/class members CIP and NME waived their 5% pro rata share of punitive damage proceeds by withdrawing from the Joint Prosecution and Sharing Agreement [in fact, thereby, only foregoing solely the rights then existing and not after-acquired, to receive portions of the punitive damage proceeds "collected by" Class Counsel/Plaintiffs' Committee (i.e., 81 %) reserved for disbursement among signatories of the Joint Prosecution and Sharing Agreement] in lieu of, and vested with, the option to obtain the right to receive settlement funds "off the top" (and segregated from that other portion "collected by" Class

Counsel/Plaintiffs' Committee) by misapprehending the distinction between punitive damages "awarded to" a class as a whole, punitive damages proceeds "collected by" certain counsel on behalf of signatories to a Joint Prosecution and Sharing Agreement (81%), and punitive damages set aside and "collected by" stand-alone parties, like the Native Corporations (3%) and Seattle Seven/Exxon (11%) and CIP and NME (5%), as holders in due course for value of valid "cede back" rights to "off the top" distributions from the EQSF?

3. Did the Ninth Circuit and District Court fail to honor the Fifth, Seventh and Fourteenth Amendments of the United States Constitution, and Alaska Constitutional rights to Due Process, Jury Trial recovery, and Equal Protection rights of CIP and NME to the benefits of the "fruits" of a plaintiffs' jury trial cause of action, settlement proceeds, and "commercial paper", to wit: "cede back" rights "blessed" by the Ninth Circuit and purchased directly from the defendant Exxon for value as partial payment and proceeds of their 2006 settlement of CIP's and NME's *Robins Dry Dock* compensatory damage claims via the rescinding and reassignment as to the 1989/1990 releases "cede back" agreements, which full 2006 settlement proceeds were promised to, and are due, to CIP and NME under the 2003 settlement CIP and NME reached with Class Counsel/Plaintiffs' Committee?

4. Did the Ninth Circuit misinterpret and misapply CIP's and NME's 2003 settlement agreement with Class Counsel/Plaintiffs' Committee, by ignoring the distinction between punitive damage proceeds "awarded to" a class as a whole, proceeds "collected by" and distributed to certain members of the class as signatories to a Joint Prosecution and Sharing Agreement, and punitive damages proceeds set aside for, "collected by," and distributed to stand-alone parties, such as CIP, NME, and Exxon, as holders in due course of valid "cede back" rights, and further err by ignoring the legal distinction between CIP's and NME's 2003 releases solely of certain then existing rights addressed by a settlement agreement as opposed to "after-acquired" rights that were preserved by the same settlement agreement?

5. Did the District Court err by ignoring said distinction between "awarded to" and "collected by" and the legal distinction in the 2003 settlement agreement between a release solely of certain then existing rights as opposed to "after-acquired" rights that were preserved by the same settlement agreement for CIP and NME to seek, re-obtain and retain the right to certain "cede back" shares, or "slice" of the "punitive damage proceeds pie" to be "collected" and distributed "off the top"?

In *Baker*, 128 S.Ct 2605, this Court held a 1:1 ratio of compensatory to punitive damages is the

upper limit of punitive damages in federal maritime cases and directed the Ninth Circuit to remit the punitive damages award based on the aggregate compensatory damages sustained and collected by all plaintiffs in the Mandatory Punitive Damages Class. Petitioners' compensatory damages collected represent 5% of those aggregate compensatory damages collected. CIP and NME are vested stand alone class members, holders in due course for value of "cede back" rights as proceeds of the 2003 settlement with the Plaintiffs' Committee/Class Counsel and the 2006 settlement with Exxon, and thus owners of, and entitled to, a collective 5% pro rata share of punitive damages proceeds currently reserved for them in the EQSF relative to CIP's and NME's actual compensatory damages, which are over $62 million (excluding prejudgment interest and attorney's fees) and collected compensatory damages of 5% of the aggregate collected compensatory damages of approximately $500 million.

CIP's and NME's pro-rata 5% share, valued at over $45 million (5% of approximately $500 million of punitive damages and 5% of $500 million of prejudgment interest and attorney's fees), is poised for distribution by the EQSF and Class Counsel/Plaintiffs' Committee to other class members, who will receive more than 1:1 pursuant to the erroneous Ninth Circuit and District Court decisions below. CIP and NME ask this Court to grant this Petition to correct an egregious departure from the accepted and usual course of judicial proceedings.

This nullification and divesture will be left uncorrected should this Court deny this Petition.

The District Court and Ninth Circuit erred by misconstruing the distinction between that portion of the punitive damages proceeds "pie" to be "collected by" and distributed via the Class Counsel/Plaintiffs' Committee as opposed to that other portion of the "pie" set aside for "off the top" collection and distribution. Both lower courts erred by misapplying CIP's and NME's limited 2003 releases, which were solely of then existing rights to proceeds "collected by" Class Counsel/Plaintiffs' Committee (e.g., not after-acquired rights or "cede back" proceeds) as a signatory to a Joint Prosecution and Sharing Agreement, wholly ignoring CIP's and NME's express preservation of their right to negotiate directly with Exxon to purchase (i.e., obtain after-acquired rights) and collect, "in the shoes" of Exxon, the "ceded back" rights re previously assigned punitive damages "off the top" by means of a cede back settlement mechanism "blessed" by the Ninth Circuit as the only realistic way that Exxon had of settling with individual plaintiffs in light of the impending mandatory class. (*In re the Exxon Valdez,* 229 F.3d 790 (9th Cir. 2000) *(Seattle Seven)*, and in *In re the Exxon Valdez*, 239 F.3d 985 (9th Cir. 2001) *(Four Processors)*).

This concept of a "slice" of a "punitive damage proceeds pie" to be either "collected by" and distributed to certain class members in accord with their pro rata share of compensatory damages or to be "collected by" the beneficiaries/assignees/promises of certain "cede back" rights was recognized by the Ninth Circuit, in *Seattle Seven*, 229 F.3d at 793, wherein the Court stated, in explaining why such "cede backs" were in furtherance of public policy and necessary for a settling defendant such as Exxon to

use as opposed to a mere release: "*...a plaintiff's release of its slice of the future lump-sum punitive damages award merely reduced the number of claimants sharing the punitive damages pie, not the size of the pie itself...*" (emphasis added).

Class Counsel/Plaintiffs' Committee and the lower courts have denied CIP and NME their 5% share (i.e., "slice") of the "pie" to which they are entitled as vested members of the mandatory class, promisees of the 2003/2006 settlement proceeds, due process owners of the "fruits" of their causes of action, holders in due course for value of the "commercial paper", to wit: the reassigned "cede back" rights.

In fact, the EQSF, since it was established in 1995, has consistently recognized two distinct methods of "collecting" and distribution of proceeds – one for signatories to Plaintiffs' Committee's Joint Prosecution and Sharing Agreement with related plans of allocation and distribution through a "matrix" (which is not directly at issue here) and another set aside for "non-signatories and stand-alone class members' to be collected and distributed "off the top" (and thus not "collected by" Plaintiffs' Committee/Class Counsel) as evidenced by approved punitive damages proceeds disbursements to certain Native Corporations (3% "off the top"), as well as the Seattle Seven/Exxon (11% "off the top") via "cede back" and thus due CIP and NME (5% "off the top") via the assignment and "cede back" mechanism approved of by the Ninth Circuit (*Seattle Seven*, 229 F.3d at 796).

Having been fully released from, and free of, the Joint Prosecution and Sharing Agreement in the 2003 settlement with Class Counsel/Plaintiffs'

Committee (even to the extent of no obligation, distinct from all other class members, to pay 3% to Class Counsel/Plaintiffs' Committee for attorney's fees) as stand-alone plaintiffs who possess, as holders in due course for value, those "cede back" rights, which were purchased for good and valuable consideration as proceeds of their compensatory damages claims, to wit: proceeds of the 2006 settlement with Exxon, CIP and NME, as a matter of basic Due Process, Equal Protection and Jury Trial recovery, the law of settlements, and as vested members of the mandatory class, and the law of "commercial paper", are entitled to fully receive and retain that 5%, to wit: the $45 million that is being reserved and held for them by the EQSF.

PARTIES TO THE PROCEEDING

Petitioners are POLAR EQUIPMENT INC., d/b/a/ COOK INLET PROCESSING, INC., and NAUTILUS MARINE ENTERPRISES, INC., Plaintiffs-Appellants below.

Respondents are GRANT BAKER, ALASKA SPORT FISHING ASSOCIATION; LOUIS E. ALBER, AHMET ARTUNER; JEFFREY BAILEY; WILLIAM BENNETT; MICHAEL WAYNE BULLOCK, ROBYNE L. BUTLER; ALBERT RAY CARROLL; DEBRA LEE, INC.; DEW DROP, INC.; LARRY L. DOOLEY, MARK DOUMIT; STEVE DOUMIT; DOUGLAS R. JENSEN; DENNIS G. JOHNSON; DONALD P. KOMPKOFF, Sr.; JOSEPH KOPECKY; DANIEL LOWELL; ANDREAN E. MARTUSHEFF; CAROL ANN MAXWELL; JACQUELAN JILL MAXWELL; ROBERT A. MAXWELL, Sr.; MICHAEL McLENAGHAN; ELENORE E. McMULLEN; LESLIE R. MEREDITH; NATIVE VILLAGE OF TATITLEK; LEONARD S. OGLE; STEVEN T. OLSEN; AUGUST M. PEDERSEN, Jr.; MARY LOU REDMOND; JOSEPH DAVID STANTON; JEAN A. TISDALL; DARRELL WOOD, as class representatives of the Mandatory Punitive Damages Class certified by the District Court below, (App. 55-63) and all persons similarly situated, who were Plaintiffs-Appellees below, and

EXXON CORP., aka Exxon Mobil Company; Captain JOSEPH HAZELWOOD; EXXON SHIPPING CO., Defendants-Appellees below.

RULE 29.6 DISCLOSURE

Polar Equipment, Inc. is a corporation wholly owned by Michael Shupe, and does business as Cook Inlet Processing, Inc.

Nautilus Marine, Inc. (aka Nautilus Marine Enterprises, Inc.) is a privately held corporation owned by M. Thomas Waterer.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING x

RULE 29.6 DISCLOSURE xi

TABLE OF AUTHORITIES xx

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

A. Summary of Key Facts 3

B. Factual and Procedural Background 4

1. *CIP's and NME's Financial Devastation from EVOS* 4

2. *1989/1990 Agreement Using "Cede Back" Mechanism Similar to Seattle Seven and "Blessed" by Ninth Circuit.* 5

3. *State Court Complaints (Post 1989/1990 Agreement), Forcible Removal to Federal Court, Certification of Mandatory Punitive Damages Class.* 7

4. *Erroneous Dismissal of Processors' "Robins Dry Dock" Compensatory Damage Claims.* 8

5. *Plaintiffs' Committee's Initial Discrimination Against and "Squeeze Out" of CIP and NME in*

Joint Prosecution and Sharing Agreement. 8

6. *EQSF Established Over Exxon's Objection.* 11

7. *District Court Recognizes Two Methods of "Collection" and Disbursement of Punitive Damages Proceeds – to Signatories to Plaintiffs' Committee's Joint Prosecution and Sharing Agreement vs. "Off the Top" as to Non-Signatories and Cede Back Right Holders* 12

8. *CIP and NME Released from Joint Prosecution and Sharing Agreement, Become Stand-Alone Plaintiffs After Restoration of Their Robins Dry Dock Compensatory Damages and Ninth Circuit's "Blessing" of Cede-Backs for Settlement in Mandatory Classes.* 15

9. *2003 Agreement (CIP and NME Preserve "Other Rights ... to ... Punitive Damages"), to Wit: to Obtain Cede Back Rights to Collect "Off the Top".* 17

10. *2006 Agreement (Exxon Rescinds/ Releases, Restores and Reassigns "Cede Back Rights" Previously Assigned to Exxon in the 1989/1990 Agreements).* 20

11. *Class Counsel/Plaintiffs' Committee Moves, Once Again, to "Squeeze Out" and Exclude CIP and NME.* 21

12. *Native Corporations, Seattle Seven and Exxon Take "Off the Top" Punitive Damages Proceeds Not "Collected By" Class Counsel/ Plaintiffs' Committee.* 22

a. Native Corporations Take "Off the Top." 22

b. District Court Approves Seattle Seven/Exxon Take "Off the Top," Ninth Circuit Blesses "Cede Back" Mechanism 23

c. Class Counsel/ Plaintiffs' Committee Approves and Acknowledges Exxon's Right to Credit for Cede Back Rights "Off the Top" Irrespective of the Matrix Scheme, and CIP and NME Demand Equal Treatment. 24

C. Proceedings Below 26

1. *District Court's Order 371 as to 2003 and 2006 Agreements.* 26

2. *Ninth Circuit Affirms District Court's Order 371* 28

REASONS TO GRANT THE PETITION 29

A. Summary of Argument 29

B. The Decisions Below Are Wrong As a Matter of Law 30

1. *District Court and Ninth Circuit Ignored Distinction Between Punitive Damages Proceeds "Awarded To" Class, Versus Those "Collected By" Class Counsel/ Plaintiffs' Committee vs. Those "Collected By" Other Parties for Disbursement "Off the Top."* 30

2. *District Court Ignored CIP's and NME's Express Preservation of Right to Obtain Right to Collect "Off the Top" Just Like the Seattle Seven As Approved by the Ninth Circuit.* 33

C. Federal Maritime and Alaska Law Violated 34

D. Constitutional and Federal Statutory Rights Violated 35

E. Fiduciary Duties to Class Members Violated 37

CONCLUSION 39

APPENDIX

Document Page Nos.

Memorandum, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir.

Nos. 07-35794/07-35796 (Consolidated), 7/24/2009 1-4

Order 371 In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 7/17/2007 5-54

Order No. 204—Order Granting Conditional Final Approval and Certifying Mandatory Punitive Damages Class, filed in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 4/15/1994 55-63

Order Establishing the Exxon Qualified Settlement Fund and Appointing Administrator in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 1/25/1995 64-72

Order Denying Rehearing and Rehearing En Banc, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 9/23/2009 73-75

Order Granting Appellant's Motion to Stay Mandate, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 9/30/2009 76-78

Order Granting Appellees' Motion to Reconsider Stay of Mandate and Denying Stay, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 10/29/2009 79-81

Mandate In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 11/3/2009 82-84

Judgment in a Civil Case in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 8/22/2007 85-86

Alaska Toxic Tort Statute, AS 46.03.822 87-98

Alaska Toxic Tort Statute, Damages, AS 46.03.824 99

Internal Revenue Code, 26 U.S.C. § 468B ... 100-105

Federal Rule of Civil Procedure 23, Class Actions 106-115

Nautilus Marine Enterprises, Inc. Recitals to Partial Release/Partial Release, 11/18/1989 116-122

Cook Inlet Processing Partial Release, 5/22/1990 123-126

Complaint in Cook Inlet Processing, Inc. v. Exxon Corporation, et al., Case No. 3AN-91-2445 CV (Alaska State Court), 3/26/1991 127-130

Complaint in Nautilus Marine Enterprises, Inc., v. Exxon Corporation, et al., (Alaska State Court), 9/6/1994 131-146

Judgment in a Civil Case in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 9/16/1994 147-148

Agreement Among Counsel Regarding Joint Prosecution, Settlement, and Damages Allocation Agreement, 4/18/1995 149-153

Settlement and Mutual Release Agreement and Exhibit A, 12/18/2002 and 1/3/2003 154-205

Excerpt from Settlement Agreement Between Exxon and the Nautilus Marine and Cook Inlet Processing, 9/29/2006 and 10/2/2006 206-209

Motion for Order for Payment and Memorandum in Support by Cook Inlet Processing in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 11/27/2009 210-234

Satisfaction of Judgment in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 9/9/2009 235-237

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

Fifth Amendment, U.S. Constitution 1, 37, 39

Seventh Amendment, U.S. Constitution 1, 2, 37, 39

Fourteenth Amendment, U.S. Constitution 1, 2, 37, 39

CASES

Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30 (3rd Cir. 1971) 38

The Amiable Nancy, 16 U. S. 546 (1818) 35

Estate of Polushkin ex rel. Polushkin v. Maw, 170 P.3d 162 (Alaska 2007) 32

Exxon Shipping Co. v. Baker, 128 S.Ct 2605 (2008) 3, 5, 10, 34, 35

Gendron v. Shastina Properties, Inc., 578 F.2d 1313 (9th Cir. 1978) 36

Grunin v. Int'l House of Pancakes, 513 F.3d 114 (8th Cir. 1975) 38

Hansberry v. Lee, 311 U.S. 32 (1940) 36

In re the Exxon Valdez,
229 F.3d 790
(9th Cir. 2000) 6, 15, 16, 23, 27, 36

In Re the Exxon Valdez,
2000 WL 1844460 (9th Cir. Dec. 14, 2000)
cert. denied 533 U.S. 903 (2001) 11

In re the Exxon Valdez,
239 F.3d 985 (9th Cir. 2001) .. 6, 15, 23, 27, 36

In re the Exxon Valdez,
270 F.3d 1215 (9th Cir. 2001) 8, 16

Officers for Justice v. Civil Service Commission,
688 F.2d 615, 625 (9th Cir. 1982),
cert. denied 459 U.S. 1217 (1983) 36, 37

Maddox v. Hardy,
187 P.3d 486 (Alaska 2008)..... 7

Rand v. Monsanto Co.,
926 F.2d 596 (7th Cir. 1991) 36

Robins Dry Dock & Repair Co. v. Flint,
275 U.S. 303 (1927) 8

Staton v. Boeing Co.,
327 F.3d 938 (9th Cir. 2003) 38

STATUTES

Internal Revenue Code §468B,
26 U.S.C. § 468B..... 2, 11, 37, 38

28 U.S.C. § 1254 1

28 U.S.C. § 1331 5

28 U.S.C. § 1332 5

28 U.S.C. § 1333 5

28 U.S.C. § 1441 5

28 U.S.C. § 1442 5

Alaska Statute § 46.03.822 ..... 3, 7

Alaska Statute § 46.03.824 ..... 3, 7

RULES

Federal Rule of Civil Procedure 23..... 2, 36, 38

PETITION FOR WRIT OF CERTIORARI

Petitioners Polar Equipment Inc., d/b/a Cook Inlet Processing, Inc., Nautilus Marine Enterprises, Inc., petition for a Writ of Certiorari to review Judgment of United States Court of Appeals for Ninth Circuit.

OPINIONS BELOW

Ninth Circuit Memorandum is unreported, and is reprinted at App. 1-4. District Court Decision, likewise unreported, is reprinted at App. 5-54.

JURISDICTION

Ninth Circuit issued Opinion on July 24, 2009 (App. 1-4), with denial of Petition for Panel Rehearing and Rehearing En Banc on September 23, 2009 (App. 73-75). Jurisdiction is under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case involves the **Fifth**, **Seventh**, and **Fourteenth Amendments of the United States Constitution**, Rule 23 of the Federal Rules of Civil Procedure and Section 468B of the Internal Revenue Code.

The **Fifth Amendment** provides: "No person shall be deprived of life, liberty, or property, without due process of law."

The **Seventh Amendment** provides:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

The **Fourteenth Amendment** provides:

> Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 23 of the Federal Rules of Civil Procedure is at App. 106-115.

Internal Revenue Code, § 468B, is at App. 100-105 ("... the fund shall be treated as the owner of the property in the fund (and any earnings thereon").

Similar vested rights exist under federal maritime law, as well as similar constitutional and

statutory rights under Alaska Law, and further rights under Alaska law, including **AS 46.03.822** (App. 87-98) and **AS 46.03.824** (App. 99) for victims of toxic torts to recover compensatory and punitive damages.

STATEMENT OF THE CASE

A. Summary of Key Facts

As of December 9, 2009, EQSF has reserved $45 million, CIP's and NME's 5% pro rata share of punitive damage proceeds, based on their vested interest in same by virtue of 2006 settlement proceeds purchased from Exxon, in partial settlement of CIP's and NME's compensatory damages, i.e., "cede back"/reassignment rights, held by Exxon from 1989/1990 to 2006, for 5% of the punitive damage award "off the top."

CIP's and NME's 5% share of compensatory damages collected, are 5% of aggregate compensatory damages collected. CIP's and NME's share of total EQSF "pie" ($1,105,689,467.82) is $45 million, which consists of punitive damages and post judgment interest and attorney's fees, as directly proportional 1:1, pursuant to this Court's ruling in *Exxon Shipping Co. v. Baker,* 128 S.Ct 2605 (2008).

CIP and NME incurred great costs, including investigation, expert reports, discovery and deposition expense, attorneys' fees, to directly prosecute their compensatory damages "*Robins Dry Dock*" claims, culminating in 2006 settlement agreement on eve of jury trial with Exxon, by which they agreed to forego jury trial rights, in exchange for good and valuable, bargained-for consideration, including: (1) $8.5 million; (2) payment of additional

funds in light of courts' resolution of issues as to prejudgment interest and attorneys' fees; and (3) rescission or releases and reassignment as to their rights to pursue and collect punitive damages ("Cede Back Rights").

Certain compensatory damages proceeds CIP and NME obtained, were included in $507.5 million figure, used to calculate value of punitive damages owed by Exxon, in light of Court's *Baker* 1:1 ratio decision, effect of which courts below have now nullified based on misinterpretation of a 2003 agreement between CIP, NME and Class Counsel/Plaintiffs' Committee.

Nullification of Cede Back Rights to their 5% share of punitive damage proceeds CIP and NME purchased from Exxon in 2006, which will result if Court denies Petition, sanctions EQSF and Class Counsel/Plaintiffs' Committee's "squeeze out" of vested class members CIP and NME, and distribute their punitive damages, beyond 1:1 ratio contemplated by this Court, to those class members who remain, including, unlike CIP and NME, clients of the Plaintiffs' Committee, and signatories to the Joint Prosecution and Sharing Agreement (thereby increasing Plaintiffs' Committee's contingent share of attorney's fees) eliminating any distribution of punitive damage proceeds to CIP or NME.

B. Factual and Procedural Background

1. *CIP's and NME's Financial Devastation from EVOS.*

On 3/24/1989, Exxon Valdez ran aground in Prince William Sound, Alaska, causing massive oil spill ("EVOS") which financially devastated local businesses and fish processors, such as CIP and "NME." NME was at "ground zero," in Valdez with

not only its source of fish to be processed destroyed, but facilities, dock and employees "shanghaied" by Exxon for clean-up operations. In year prior to EVOS, CIP had made millions of capital expenditures into facilities in Prince William Sound and related Alaskan fisheries, on brink of reaping rewards of its investment when EVOS occurred, and thereby suffered extraordinary loss.

CIP's and NME's actual combined compensatory damages to date exceed $62 million (not including prejudgment interest and attorneys fees), and may well be in excess of $100 million as this litigation continues.

CIP's and NME's actual compensatory damages recovered are approximately 5% of aggregate compensatory damages received, as recognized by District Court, Ninth Circuit, and this Court in *Baker*.

Both CIP and NME filed direct actions against Exxon to recover compensatory losses as a result of EVOS, and for punitive damages claims in Alaska State Court. (App. 87-99 and 127-146), and were the subject of a mandatory federal class action removal. (App. 55-63). The District Court asserted jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1333, 1441, and 1442.

2. *1989/1990 Agreement Using "Cede Back" Mechanism Similar to Seattle Seven and "Blessed" by Ninth Circuit.*

Like thousands of other victims of EVOS on brink of financial ruin, and held "economic prisoners" by Exxon, CIP and NME were compelled to enter into partial assignments and settlements with Exxon in 1989 (as to NME) and 1990 (as to CIP) (collectively, "1989/1990 Agreements"). (App. 116-

126). Agreements did not address all of CIP's and NME's compensatory damages, just those suffered in 1989 and part of 1990, so CIP and NME could receive some money to keep their doors open pending conclusion of litigation.

Specifically, in 1989/1990 Agreements, CIP and NME released certain claims and ceded/assigned their claim to punitive damages arising out of EVOS to Exxon (i.e. a classic "cede back" agreement). In exchange, Exxon paid CIP $2,850,000, including releases as to 1989 compensatory damages and through 5/22/1990, while NME received $2,245,279, including releases as to 1989 losses. (App. 116-126).

Similar agreements were also signed by fishermen class members, but Class Counsel/ Plaintiffs' Committee agreed with Exxon to disregard those as to their own contingent fee clients, while concurrently using same types of agreements, initially to effectively "squeeze out," "ban," and "eject" CIP and NME from any share of punitive damages under initial Joint Prosecution Sharing Agreement, plans of allocation and distribution, and matrix.

"Cede back" mechanism in 1989/1990 Agreements as assignments of punitive damages, as also used by "Seattle Seven" processors, initially held invalid by District Court, was later "blessed" by the Ninth Circuit. *In Re the Exxon Valdez,* 229 F.3d 790 (9th Cir. 2000) (hereinafter "*Seattle Seven*") and *In Re the Exxon Valdez,* 239 F.3d 985 (9th Cir. 2001) (hereinafter "*(Four Processors*").[1] Exxon is now

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[1] This appeal was prosecuted by Exxon itself as the assignee of four excluded processors' i.e., the "Four Processors."

using same cede back mechanism, with Plaintiffs' Committee's approval, to collect 11% "off the top" of the EQSF. (App. 235-237). However, CIP and NME are denied equal treatment.

3. *State Court Complaints (Post 1989/1990 Agreement), Forcible Removal to Federal Court, Certification of Mandatory Punitive Damages Class.*

CIP's and NME's businesses continued to suffer after 5/22/1990, and CIP's and NME's compensatory damages from EVOS, excluding prejudgment interest, attorney's fees, total $39,084,000 (CIP) and $23,889,000 (NME).

On 3/26/1991, CIP filed direct action complaint in Alaska state court, in asserting right to recover damages incurred after May 1990. (App. 127-130). On 9/6/1994, NME filed Alaska state court direct action complaint against Exxon for post-1989 losses. (App. 131-146). Both sought punitive damages under Alaska law (App. 87-99) and federal maritime law.

CIP's and NME's post-1989 state court causes of action were subsequently forcibly removed to Federal District Court (the "District Court"). (App. 55-63). CIP and NME were forced into District Court, although their causes of action for compensatory damages and punitive damages existed under both federal maritime law and Alaska state law (see AS §§ 46.03.822 and 46.03.824 and *Maddox v. Hardy*, 187 P.3d 486 (Alaska 2008)) given their status as victims of mass toxic tort in Prince William Sound, Alaska and related Alaska fisheries.

On 4/15/1994, District Court certified Mandatory Punitive Damage Class as to all persons or entities that "possess" or "have asserted" claim(s)

for punitive damages against Exxon arising from the EVOS. (App. 55-63). Since that time, CIP and NME have remained full and vested members of the Mandatory Punitive Damages Class, still so situated.

4. *Erroneous Dismissal of Processors' "Robins Dry Dock" Compensatory Damage Claims.*

On 1/26/1994, District Court erroneously dismissed claims of seafood processors (including CIP and NME), on motion for summary judgment, holding that the fish processors' claims were barred by *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927), which may preclude recovery of certain economic losses absent physical damage to proprietary interest. They appealed and were successful in reinstating their claims under Alaska law. *In re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001).

5. *Plaintiffs' Committee's Initial Discrimination Against and "Squeeze Out" of CIP and NME in Joint Prosecution and Sharing Agreement.*

The jury awarded $287 million in compensatory damages on fishermen's compensatory damages and $5 billion in punitive damages. (App. 147-148).

Prior to verdicts, during time they were signatories to Joint Prosecution and Sharing Agreement, CIP and NME worked closely with Plaintiffs' Committee, with NME providing valuable services and advice and evidence as to compensatory and punitive damages. Following jury verdicts, Class Counsel/Plaintiffs' Committee approved compensatory damage claims for their fishermen

clients in aggregate of $1.5 billion (5.5 times greater than the amount awarded by jury), for purposes of "matrix".

$1.5 billion approved by Class Counsel/Plaintiffs' Committee as to their own fishermen contingent fee clients' claims presumably included $585 million rejected by jury. Class Counsel/Plaintiffs' Committee also approved additional $628 million in claims (including CIP's and NME's damages which Class Counsel/Plaintiffs' Committee undervalued at $20 million with significant reduction by Class Counsel for "litigation risk" taken on their behalf), approving class' total compensatory damage claims at $2.2 billion for purposes of "matrix".

No doubt, Class Counsel/Plaintiffs' Committee expected short fall to come from $5 billion in punitive damages awarded by jury.

After punitive damages verdict, Exxon and Seattle Seven revealed their secret "cede back" deal, which had not been revealed to jury, Class Counsel/Plaintiffs' Committee or District Court, whereby Exxon held percentage of the Seattle Seven's rights (including approximately 20% of punitive damage award, subsequently reduced to 11% by agreement) to punitive damages pursuant to their "cede back" agreement. Exxon moved to reduce judgment under Seattle Seven cede back agreement, and also stated they had similar rights as to CIP and NME.

This revelation, quite frankly, not only drew concern and extreme "ire" of District Court and Plaintiffs' Committee, but created somewhat of a "panic."

Class Counsel/Plaintiffs' Committee and District Court realized "secret deal" with Seattle Seven would reduce the $5 billion initial punitive damage recovery by approximately $1 billion, and sought to resist and avoid same. In doing so, Class Counsel/Plaintiffs' Committee "turned on" CIP and NME, out of concern if they did not seek to "squeeze them out," and eject them from any punitive damages recovery, it might prejudice position they were taking before Ninth Circuit that Seattle Seven "cede backs" were invalid and should not be honored (a position ultimately held erroneous by the Ninth Circuit).

District Court initially refused to honor cede back agreements, and Plaintiffs' Committee, fearful Seattle Seven cede back would reduce recovery "collected by" them for distribution to signatories to Joint Prosecution and Sharing Agreement, "threw the baby out with the bath water" and "turned on" CIP and NME, denying CIP and NME any punitive damages proceeds under Joint Prosecution and Sharing Agreement and plans of allocation and distribution and matrix, stating CIP and NME had released and/or assigned same to Exxon in 1989/1990 Agreements.

Class Counsel/Plaintiffs' Committee informed CIP and NME, despite their substantial compensatory damages (which were included in Plaintiffs' Committee's ultimate punitive damages settlement with Exxon under *Baker*, and now equate to 5% of punitive damage proceeds sought on this Petition), CIP and NME would be excluded under Joint Prosecution and Sharing Agreement from any share of punitive damage award because CIP and NME had released and/or "ceded back" their

punitive damages claims with Exxon in 1989/1990 Agreements. CIP and NME resisted Class Counsel/Plaintiffs' Committee's attempt to exclude them, but were unsuccessful before the District Court and Ninth Circuit at that time. *In Re the Exxon Valdez*, 2000 WL 1844460 (9th Cir. Dec. 14, 2000) cert. denied 533 U.S. 903 (2001).

6. *EQSF Established Over Exxon's Objection.*

On 12/1/1994, Class Counsel/Plaintiffs' Committee moved District Court, pursuant to Internal Revenue Code §468B, for an order to establish Exxon Qualified Settlement fund. (U.S.D.C. Docket 6189).

Class Counsel/Plaintiffs' Committee asked District Court to appoint Lynn Lincoln Sarko as Administrator of EQSF, retain jurisdiction over any claims filed against the EQSF or its assets, and to direct Sarko to "[c]omply with, and perform all duties required under, Code §468B and Treasury Regulations § 1.468B-1 thorugh-5 ...". Id.

Exxon opposed on grounds it would interfere, as it has here, with Exxon's attempt to settlement with individual plaintiffs.[2]

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[2] Exxon argued that Plaintiffs' Committee's motion to establish the EQSF for the entire "pie" served as a:

> [N]aked power-grab designed to enhance the authority" of certain Lead Plaintiffs by erecting the EQSF as a 'coercive mechanism that with require any settlement reached in the future with any plaintiff to be funneled through a fund controlled by certain of plaintiffs' class action counsel. . . Past experience shows that the involvement of precisely these lawyers tends to reduce, not enhance, the possibility of partial

On 1/25/1995, District Court established EQSF, directing Exxon to deposit $20 million for disbursement to Alaska Native Class. (App. 64-72).

7. *District Court Recognizes Two Methods of "Collection" and Disbursement of Punitive Damages Proceeds – to Signatories to Plaintiffs' Committee's Joint Prosecution and Sharing Agreement vs. "Off the Top" as to Non-Signatories and Cede Back Right Holders.*

Plans of allocation and distribution for EQSF, as amended, created two categories of claimants: those who are parties (signatories) to Plaintiffs' Committee's Joint Prosecution and Sharing Agreement, and those who are not.[3] Signatories,

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settlements " (U.S.D.C. Docket 6214 [redacted version].

Exxon's prediction as to disruptive effect of EQSF on future settlement was accurate:

> If any settlement is arrived at with any plaintiff, whether in federal or in state court, the proceeds of such a settlement may not be paid to the plaintiff, or as the plaintiff directs, but *must be paid into the Exxon QSF which Mr. Sarko will control as Administrator, and then distributed when and if he and the other plaintiffs' counsel choose to do so*, subject to the Court's supervision .. Common sense indicates, however, that this litigation has reached precisely the state where restrictions on individual parties' ability to settle are undesirable and short-sighted ... (U.S.D.C. Docket 6214 [redacted version]) (emphasis added)

[3] Joint Prosecution and Sharing Agreement provided, as amended in 1995, signatory counsel agreed:

receive their share "collected by" Class Counsel/Plaintiffs' Committee for signatories of the Joint Prosecution and Sharing Agreement, to be distributed under plans of allocation and distribution through "matrix" scheme as to relevant class categories, i.e., fishermen, landowners, processors, etc. They have approximately 81% of "pie."

Latter, non-signatories and "cede back" holders, receive "off the top" pro rata share of remaining funds (i.e., funds not "collected by" Class Counsel/Plaintiffs' Committee) and thus not subject to reduced "matrix shares" (which account for litigation risk undertaken by lead counsel on signatories' behalf) applicable to signatories to Joint Prosecution and Sharing Agreement. They have approximately 19% of "pie."

Judge Holland explained:

> The plan originally reserved 3% '<u>off the top</u>' of all awards for six Native

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> All recoveries from [the Exxon] defendants by any plaintiff or group of plaintiffs, [signatories to same and not stand alone plaintiffs] whether by settlement or trial, will be shared among all plaintiffs (whether their claims survive or are dismissed and are subject to appeal at the time of payment) in accordance with the allocation matrix attached ... (U.S.D.C. Docket 8528)

Relevant allocation matrix provided that the seafood processors would receive 2 1% of any recoveries. CIP's and NME's counsel initially signed onto Joint Prosecution and Sharing Agreement in 1994. Later, in 2003, both withdrew, and became stand-alone plaintiffs. (App. 154-205). They were even free from any duty to pay 3% to Plaintiffs' Committee as attorneys' fees, which all other class members must do.

> Corporations ... The claims of the six Native Corporations elected not to join the Joint Prosecution Agreement or sign on to the Allocation Plan ..." (U.S.D.C. Docket 6806 at 5).

Approving Class Counsel/Plaintiffs' Committee's plan, District Court defined that portion of EQSF damage "pie" as "off the top", not subject to reduced "matrix share" in Joint Prosecution and Sharing Agreement, just as Class Counsel/Plaintiffs' Committee asked District Court to do.[4]

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[4] 1/12/1996, Class Counsel/Plaintiffs' Committee acknowledged portion of aggregate punitive damages "pie" to be disbursed "off the top" to non-signatories.

> It is appropriate for the Court to give final approval to the Plan of Allocation notwithstanding that a few individual plaintiffs have, to date, withheld agreement. The Plan of Allocation provides that any amounts awarded to non-signatories will be taken 'off the top', and the percentage shares of the various Claim Categories for which the Plan of Allocation provides [e g., signatories] will be applied to the aggregate amount of recoveries remaining after the payment is made to those non-signatories. Memorandum In Support Of Joint Motion of Plaintiffs and Defendants For Preliminary Approval Of Phase IV Settlement, Etc. See, CIP's Appendix to Petition for Writ 2000 at 87 (emphasis added).

Class Counsel/Plaintiffs' Committee, in same motion, further noted: "The Plan of Allocation does not apply to the "Seattle Seven" [fish] processors who settled their Exxon claims early in the litigation and who will not share in any recoveries [collected by Plaintiffs' Committee] except their own settlement Id. at p. 86, n. 15.

8. *CIP and NME Released from Joint Prosecution and Sharing Agreement, Become Stand-Alone Plaintiffs After Restoration of Their Robins Dry Dock Compensatory Damages and Ninth Circuit's "Blessing" of Cede Backs for Settlement in Mandatory Classes.*

In 2000 and 2001, Ninth Circuit validated "cede back" settlements between Exxon and the Seattle Seven, as well as Sea Hawk, as a legitimate and useful means of individual class members settling with Exxon in mass tort actions. See, *Seattle Seven*, and *Four Processors*. Ninth Circuit described concept of "cede back" agreements as best method of reducing damage "pie" in mass tort class action, stating:

> The Seattle Seven, the largest of the region's seafood processors, sued Exxon in 1989. Exxon sought to reach a settlement as quickly as possible, but its negotiations with the Seattle Seven and other plaintiffs revealed a roadblock posed by the increasing likelihood that a mandatory punitive damages class would be certified. Claims for compensatory damages could be easily

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CIP and NME timely objected to Plans of Allocations and Distribution while they were still signatories to Joint Prosecution and Sharing Agreement. Later, when CIP and NME officially withdrew from Joint Prosecution and Sharing Agreement in 2003, they expressly preserved right to obtain same private settlement as Seattle Seven reached with Exxon, and to retain same "off the top" distribution of ceded punitive damage proceeds as Seattle Seven, which they then did, i.e., "after acquired" in 2006.

> disposed of by exchanging payment for releases, but a plaintiff's release of its slice of the future lump-sum punitive damages award merely reduced the number of claimants sharing the punitive damages pie, not the size of the pie itself. Exxon thus actually faced a financial disincentive to settle, because any amount of money it paid to persuade a plaintiff to forgo its slice would nevertheless be included in the amount of the eventual award.
>
> On January 8, 1991, the Seattle Seven and Exxon settled the Seattle Seven's claims for the 1989 and 1990 fishing seasons in exchange for a payment of $63.75 million. To avoid the punitive damages dilemma, the parties included in the agreement a "cede back" provision. The provision stated that the Seattle Seven would not release their punitive damages claims against Exxon but would instead remain parties to the litigation in order to receive their share of an eventual punitive damages award, which they would then cede back to Exxon.

Seattle Seven, at 793 (emphasis added.)

Also in 2001, Ninth Circuit restored CIP's and NME's ability to recover their *Robins Dry Dock* compensatory damages, including doing so based on Alaska law. *In Re Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001).

Following these remands, CIP and NME "made peace" with Class Counsel/Plaintiffs'

Committee in 2003 settlement agreement to "each go their own way," and "eat what they kill" as set forth more fully in next section, upon following terms and conditions:

- CIP and NME were fully released from and free from Joint Prosecution and Sharing Agreement (even free from 3% attorney's fees all other class members were forced to pay);
- CIP and NME were entitled, as "stand alone plaintiffs," to fully pursue their reinstated Robins Dry Dock compensatory damages claims from Exxon, and were fully entitled to receive and retain all proceeds of same free from Class Counsel/Plaintiffs' Committee and other class members;
- CIP and NME agreed, solely, not to seek share of any proceeds of punitive damages verdict and judgment that were actually both "awarded to" and "collected by" Class Counsel/Plaintiffs' Committee;
- At time of such settlement, actual Cede Back Rights as to CIP and NME, via 1989/1990 releases and assignments, resided in Exxon and were thus not waived or released by CIP or NME in 2003 but were "after-acquired" in subsequent 2006 Settlement.

9. *2003 Agreement (CIP and NME Preserve "Other Rights ... to ... Punitive Damages"), to Wit: to Obtain Cede Back Rights to Collect "Off the Top".*

January 2003, Class Counsel/Plaintiffs' Committee and CIP and NME entered into agreement to release CIP and NME from Joint Prosecution and Sharing Agreement (including

Orders 351 and 352 as to "matrix" scheme regarding proceeds "collected by" Plaintiffs' Committee) and any obligation to:

- Contribute any funds from Robins Dry Dock claims to Joint Prosecution Joint Sharing Agreement of sums to be distributed under related plans of allocation and distribution;
- Pay Class Counsel/Plaintiffs' Committee any attorney's fees.

This allowed CIP and NME to pursue Exxon directly, as stand-alone plaintiffs regarding their Robins Dry Dock compensatory damages claims and certain economic coercion punitive damages claims as to Exxon's post-spill conduct, in exchange for CIP's and NME's promise to waive, solely, then existing rights to share in that portion of punitive damages both "awarded to and collected by" Class Counsel/Plaintiffs' Committee (e.g., subject to plans of allocation and distribution and "matrix shares") while "expressly" recognizing that CIP and NME "preserve and do not waive all their other rights, claims ... damages, rights to proceeds, recoveries .. as to either compensatory or punitive damages ..." (the "2003 Agreement") (App. 154-205) (emphasis added).

Specifically, 2003 Agreement provided Class Counsel/Plaintiffs' Committee agreed: "All proceeds [of CIP's and NME's stand-alone] activities, including the proceeds of settlement or trial of any and all such 'Robins Dry Dock' claims, and any related claims, or any other claims [CIP and NME] may have [existing presently] against Exxon which related to the Exxon Valdez grounding and oil spill ... retained exclusively [for CIP and NME] ... [and] all parties to the joint prosecution agreement, would

agree not to ... impact ... retain or convert, or assert authority to ... any said claims." (App. 175-176).

In exchange, CIP and NME:

> Agree that neither... have any right to participate in any distribution of or receive any share of any punitive damages [both] awarded to and collected by Plaintiffs" [and that CIP and NME] "[w]aive, relinquish, release and discharge any and all rights of any nature whatsoever which they contend they may have to participate in any distribution of or receive any share of any punitive damages [both] awarded to and collected by Plaintiffs [or to] participate in any distribution of or receive any share of any recoveries by [Plaintiffs' Committee's clients] pursuant to either the Amended Plan of Allocation approved by the [District] Court in Order No[s]. [317, 327, 351, 352].
>
> (App. 158-159) (emphasis added).

As consideration for CIP's and NME's release and waiver of rights, solely to collect, under any portion of punitive damages both "awarded to and collected by" Class Counsel/Plaintiffs' Committee under plan of allocation, etc., the 2003 Agreement preserved "other ... rights to proceeds", and confirmed it was:

> [E]xpressly understood and agreed that [CIP and NME] **preserve** and **do not waive** all their other rights, claims ... damages, rights to proceeds, recoveries .. as to either compensatory or punitive

damages ..." (App. 160) (emphasis added).

In sum, CIP and NME gave up approximately $181,000 which Class Counsel/Plaintiffs' Committee promised them as compensatory damages as signatories to Joint Prosecution and Sharing Agreement in exchange for right to "eat what they kill" as to ability to thus receive all fruits and proceeds of *Robins Dry Dock* claims, including to get Exxon to rescind the 1989/1990 releases, and reassign the Cede Back Rights to CIP and NME as to their 5% share of punitive damage pie, collected "off the top," and stand "in the shoes" of Exxon as non-signatory. The after-acquired, reassigned Cede Back Rights were thus not any of released rights, to share in that other portion of the "pie" "collected by" Plaintiffs' Committee.

10. *2006 Agreement (Exxon Rescinds/ Releases, Restores and Reassigns "Cede Back Rights" Previously Assigned to Exxon in 1989/1990 Agreements).*

In 2006, CIP and NME, after spending hundreds of thousands of dollars preparing for trial, conducting innumerable depositions and pretrial litigation in many states, and asserting $100 million in compensatory damages ($39,000,000 as to CIP and $23 million, excluding, as to both, prejudgment interest, costs, attorney's fee), settled with Exxon on the eve of jury trial.

Exxon agreed to fully revoke and rescind releases of punitive damages, and reassign rights previously assigned/ceded to Exxon in 1989/1990 Agreements (which had previously been used by Class Counsel/Plaintiffs' Committee to "squeeze out" and "bar" and "eject" CIP and NME from their

rightful share of liability fund created by mandatory punitive damages class) and restore and reassign to CIP and NME "cede back" or "assignment" rights, as well as partial payment of $8,500,000.00 to both CIP and NME with agreement to pay additional money due in light of ultimate resolution of ongoing prejudgment interest and attorneys fees issues ("2006 Agreement") (App. 206-209). Specifically, CIP and NME entered into 2006 Agreement with Exxon on following conditions:

- Rescinding of releases and reassignment as to the 1989/1990 releases, "cede back" Agreements as to punitive damages, to wit, CIP's and NME's restored and "after-acquired rights" to collect "off the top" of the EQSF (hereinafter "Cede Back Rights").
- $8.5 million payment from Exxon to CIP and NME due immediately;
- Additional sums due CIP and NME as to certain rulings regarding prejudgment interest and Rule 82 attorney's fees, which now approach $13 million.

11. *Class Counsel/Plaintiffs' Committee Moves, Once Again, to "Squeeze Out" and Exclude CIP and NME.*

EQSF Administrator has, to date, reserved in excess of $45 million for CIP and NME with respect to CIP's and NME's claim to their 5% "off the top" pro rata share of punitive damages settlement proceeds held by fund.

After the 2006 Settlement, and notice of same, on 4/18/2007 Class Counsel/Plaintiffs' Committee again sought to "squeeze out" CIP and NME and moved for court order that, among other things, CIP and NME were still excluded from any right to share

in punitive damages awarded to Mandatory Punitive Damages Class, contending the 2003 Agreement released any and all of CIP's and NME's rights to share in proceeds of Mandatory Punitive Damages Class judgment. (U.S.D.C. Docket 8505). They ignore "collected by" versus "awarded to" distinction, valid rescinding of releases, reassignments of the Cede Back Rights and "off the top" mechanism for collection and disbursement.

12. *Native Corporations, Seattle Seven and Exxon Take "Off the Top" Punitive Damages Proceeds Not "Collected By" Class Counsel/Plaintiffs' Committee.*

Throughout this litigation, District Court, Class Counsel/Plaintiffs' Committee and Exxon have expanded "off the top" status to non-signatories of Joint Prosecution Agreement, notwithstanding "matrix share" applicable to signatories of Joint Prosecution and Sharing Agreement. (App. 149-153).

a. Native Corporations Take "Off the Top".

Of $383,349,750 which EQSF received as payment from Exxon,[5] as punitive damages principal, $19,678,268 has been distributed "off the top" to certain Native Corporations who were non-

[5] Exxon did not deposit the entire $507.5 million into EQSF. They withheld approximately $40 million for their own costs and fees (which was subsequently rejected and they were directed to put the $40 million back). Notably, Exxon also withheld Seattle Seven's retention of percentage of its "ceded rights" pursuant to Seattle Seven and Exxon "cede back" agreement for which Exxon is now taking 11% "off the top" credit from EQSF

signatories to Joint Prosecution and Sharing Agreement, and were entitled to approximately 3%.

On 7/1/2009, EQSF received $470,268,908.71 in punitive damages interest from Exxon. Of the $470,268,908.71, $21,152,178.22 was distributed to Chugach group of Native Corporations because of their 3% "off the top" status. (U.S.D.C. Docket 8884)

b. District Court Approves Seattle Seven/Exxon Take "Off the Top," Ninth Circuit Blesses "Cede Back" Mechanism.

As to Seattle Seven, who were also non-signatories to Joint Prosecution and Sharing Agreement and related distribution plan, District Court initially refused to allow them any "off the top" recovery because they had ceded their rights to punitive damages to Exxon and not disclosed same to court or jury. However, Ninth Circuit subsequently ruled, see *Four Processors*, issue of "whether Exxon may enter into settlement agreement that permits it to recoup damages assessed against itself" was controlled by *Seattle Seven, 239 F.3d* at 988. District Court erred "in refusing to permit Exxon to share [via a "cede back" - "off the top"] in the punitive damages award." Id.

District Court ruled (via agreement with Plaintiffs' Committee) that 11% of any punitive damage recoveries must be allocated to Seattle Seven "off the top" and as non-signatories to Joint Prosecution and Sharing Agreement. (U.S.D.C. Docket 7441), see generally, App. 235-237. The modification also permitted Seattle Seven to retain portions of their punitive damage allocation rather than ceding it all back to Exxon. Id.

Of $383,349,750 which the EQSF received as payment from Exxon, $1,674,750.00 of total was set aside, "off the top" for Seattle Seven pursuant to repurchase from Exxon of portions of their "cede back" rights. (U.S.D.C. Docket 8884).

c Class Counsel/Plaintiffs' Committee Approves and Acknowledges Exxon's Right to Credit for Cede Back Rights "Off the Top" Irrespective of the Matrix Scheme, and CIP and NME Demand Equal Treatment.

While time was running for filing of this Petition, after Plaintiffs' Committee had told Ninth Circuit in instant case CIP and NME shall not have their reassigned "cede back" rights and claims honored, Exxon continued to assert its own "cede back" rights at District Court level, as it was "end of the day," to see who had standing to "collect" proceeds from $500 million in punitive damages and $500 million in post-judgment interest.

On 8/31/2009, Exxon moved District Court for order directing EQSF Administrator to make payment to Exxon in the amount of $4,408,499.76 pursuant to additional assignment agreements Exxon entered into with Sea Hawk, irrespective of Orders 351 and 352 and the Plan of Allocation and Distribution and the matrix, and even if the "cede back" processor assignors were "over paid." (U.S.D.C. Docket 9287). Class Counsel/Plaintiffs' Committee agreed to recommend reserves for Exxon to collect on these "off the top" claims irrespective of the Joint Prosecution and Sharing Agreement and related orders and plans of allocation and distribution. (U.S.D.C. Docket 9319). Specifically,

Class Counsel/Plaintiffs' Committee advised the District Court to order that:

> The [EQSF] Administrator is hereby authorized and directed to reserve $5,681,056.39 of the litigation proceeds held in the [EQSF] to cover Exxon's claims made in its August 31, 2009 Motion. Such reserve shall be set aside from the litigation proceeds as a whole and not from the fund held for benefit of any particular Claim Category. [i.e., "off the top"] The availability of the reserve to satisfy Exxon's claims shall not be affected or lessened in any way if the Processor Claim Category, or any other Claim Category, or any individual claimant shall turn out to be overpaid.

(U.S.D.C. Docket 9319-2 at 2) (emphasis added.)

12/9/2009, in anticipation of District Court's entry of judgment against Exxon assessing punitive damages in principal amount of $507.5 million, with post-judgment simple interest computed at 5.9% per annum from 9/24/1996 until paid, Class Counsel/Plaintiffs' Committee acknowledged Exxon's right to take 11% credit based on Seattle Seven "cede back" agreement, notwithstanding plans of allocation and distribution and Orders 351 and 352, which orders were subsequently modified in differing fashions post-2003, approving of:

- Exxon's election to take 11% credit [as to Seattle Seven] and 3% credit [as to Native Corporations] against it obligation to pay any money judgment into the consolidated case fund [e.g.,

those funds "collected by Class Counsel/Plaintiffs' Committee and those other funds set aside for "off the top" disbursement] held in the EQSF, as well as;

- Exxon's full satisfaction of judgment by paying $383,349,750 into fund on 8/27/2008, then $470,268,908.71 into the fund on 7/1/2009 and final payment of $71,844,955.51 in final satisfaction of judgment on 12/9/2009. (App. 235-237).

Quite simply, it was "end of the day" and owners/holders of "commercial paper", i.e., "cede back rights," "check," "IOU", "lien" were demanding to be paid and in fact entitled to be paid as evidenced by reserve for the additional Exxon "cede back" claims agreed to by Mr. Sarko (EQSF Administrator) and Class Counsel/Plaintiffs' Committee and blessed by Court. Accordingly, CIP and NME did likewise.

On 11/3/2009, CIP filed its Notice and Demand and Presentment for Payment of settlement proceeds of the EVOS punitive damage verdict and judgment, with anticipated joinder by NME. (U.S.D.C. Docket 9401).

On 11/27/2009, CIP moved the District Court for an Order for Payment, (App. 210-234), with similar anticipated joinder.

C. Proceedings Below

1. *District Court's Order 371 as to 2003 and 2006 Agreements.*

In Order 371, District Court ruled on Plaintiffs' Committee's Motion to Squeeze Out and Exclude CIP and NME. District Court acknowledged while 2006 Agreement lawfully rescinded 1989/1990 releases and reassigned the

Cede Back Rights and reinstated CIP's and NME's punitive damages claims against Exxon (App. 41), and "even though Cook Inlet and Nautilus meet the definition of a class member" (App. 53), 2003 Settlement Agreement nullified all their rights to punitive damages, ruling that by virtue of 2003 Agreement "they gave up [all] their rights to share in the punitive damages class award (sic.)." (App. 51). This does not account for "collected by" language and concept of after-acquired rights.

District Court made no mention of language in 2003 Agreement expressly "preserving" CIP's and NME's "other rights ...to proceeds, ... as to either compensatory or punitive damages ..." which were not *collected by* Class Counsel/Plaintiffs' Committee – namely those Cede Back Rights, then held in 2003 by Exxon to which CIP and NME had no rights until 2006, by virtue of 1989/1990 Agreement to "off the top" portion of punitive damages which, by definition, are not "collected by" Class Counsel/Plaintiffs' Committee (App. 158, 160). (emphasis added). Those Cede Back Rights were "after-acquired" by CIP and NME post-2003 in 2006 settlement with Exxon and now reside in CIP and NME and must be honored.

In short, in Order 371, the District Court refused to allow stand-alone plaintiffs' rights to enjoy fruits of their 2006 Settlement Proceeds Cede Back Rights purchased from Exxon, just as District Court initially erroneously ruled as to the Seattle Seven (subsequently reversed by the Ninth Circuit). See *Seattle Seven, 229 F.3d 790,* and *Four Processors, 239 F.3d 985* as to fellow fish processors.

2. *Ninth Circuit Affirms District Court's Order 371*

Ninth Circuit misinterpreted CIP's and NME's appeal of Order 371 and position by stating they:

> [N]ow contend that the 2003 agreement should not be given effect (sic.) because their 2006 settlement with Exxon, to which the plaintiffs' class was not a party" because "Exxon 'reassigned and restored' Polar Equipment's and Nautilus Marine's rights to share in the class recovery of punitive damages.
> (App. 3).

Ninth Circuit erroneously ruled District Court correctly held, in light of 2003 Agreement, by which CIP and NME "agreed to be 'bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes,' and they agreed to '[w]aive, relinquish and discharge any right of any nature whatsoever which either of them may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to either the Amended Plan of Allocation approved ... [in] Order No. 351, or the Amended Plan of Distribution of Allocations to the Processor Claim Category approved by the Court in Order No. 352 [i.e., the proceeds "collected by" the Plaintiffs' Committee]'" (App. 4), CIP and NME could not share in <u>any</u> punitive damages proceeds of 1994 verdict and judgment.

Like District Court below, Ninth Circuit's opinion did not discuss language in 2003 Agreement by which CIP and NME preserved their right to punitive damages that were <u>not</u> both "awarded to and collected by" Class Counsel/Plaintiffs'

Committee subject to allocation amongst signatories to the Joint Prosecution Agreement as opposed to "*other rights*, claims ... damages, rights to proceeds, recoveries ... as to either compensatory or *punitive damages* ..." which were not "collected by" Class Counsel/Plaintiffs' Committee." (App. 158, 160) (emphasis added).

On 8/14/2009 CIP and NME moved for Rehearing and Rehearing En Banc. Rehearing was denied. (App. 73-75).

REASONS TO GRANT THE PETITION

A. Summary of Argument

Few issues are more important. At stake are Rights to Due Process, Equal Protection and Jury Trial of two fish processing businesses, and stand-alone members of federal mandatory punitive damages class, who have fought for 20 years to obtain full compensation for devastating economic losses they suffered due to catastrophic EVOS. It is now "the end of the day," for this 20 years of litigation.

CIP and NME "stand in the shoes of Exxon", as to Cede Back Rights and are "holders in due course" for value as to same, and District Court, Class Counsel/Plaintiffs' Committee and Administrator of the EQSF have an obligation to honor and enforce said rights, given CIP's and NME's standing as vested members of mandatory Class, holders in due course for value, presenting such rights for payment given Notice, Demand, and Presentment, and as promisees/beneficiaries of 2003 and 2006 Settlements.

District Court, Class Counsel/Plaintiffs' Committee and EQSF Administrator by "squeezing out" CIP and NME, have breached their fiduciary duties to honor CIP's and NME's rights and arrange for reserved settlement proceeds "off the top" of the total fund, just as they have done for Seattle Seven, Native Corporations and Four Processors.

B. The Decisions Below Are Wrong As a Matter Of Law.

1. *District Court and Ninth Circuit Ignored Distinction Between Punitive Damages Proceeds "Awarded To" Class, Versus Those "Collected By" Class Counsel/Plaintiffs' Committee vs. Those "Collected By" Other Parties for Disbursement "Off the Top."*

CIP and NME, like Seattle Seven, are not seeking distribution of funds "collected by" Class Counsel/Plaintiffs' Committee for distribution under plans of allocation and distribution and matrix system for signatories of the joint prosecution agreement, but "off the top" and thus not "collected by" Plaintiffs' Committee. In 2003, both parties were well aware of 2000 and 2001 decisions in *Seattle Seven* and *Four Processors* declaring the assignment and cede back mechanism "lawful" and "enforceable". Accordingly, CIP and NME made sure to preserve for themselves, in the 2003 Agreement, opportunity to seek from Exxon, after execution of 2003 Agreement, as settlement proceeds of their "*Robins Dry Dock*" claims, restoration and cede back of punitive damages rights then held by Exxon, which they did in 2006.

Ninth Circuit's opinion mischaracterizes CIP's and NME's position, as 2003 Agreement waived only

presently existing rights, to portion of EQSF both "awarded to and collected by" Class Counsel/Plaintiffs' Committee, explicitly preserving CIP's and NME's right to regain rights, then held by Exxon, to Cede Back Rights taken "off the top" of the EQSF for non-signatories, just like Ninth Circuit approved for Seattle Seven in 2000. (App. 158, 160). Instead, Ninth Circuit described CIP's and NME's position:

> Appellants now contend that the 2003 Agreement should not be given effect [sic] because their 2006 settlement with Exxon, to which the plaintiffs' class was not a party, said that Exxon 'reassigned and restored' [CIP's and NME's] rights to share in the class recovery of punitive damages. (App. 3).

Neither CIP nor NME contended 2003 Agreement should not be given effect. It is precisely 2003 Agreement which allows them to keep all after-acquired Cede Back Rights they purchased from Exxon in 2006 as to punitive damage proceeds "off the top", as non-signatories to Joint Prosecution and Sharing Agreement, which are not those punitive damage proceeds "collected by" Class Counsel/Plaintiffs' Committee.

Nowhere in 2003 Agreement do CIP or NME waive their right, explicitly preserved therein to seek and retain "*other rights*, claims ... damages, rights to proceeds, recoveries ... as to either compensatory or *punitive damages* ... (namely, those "off the top" rights to punitive damages which CIP and NME ceded to Exxon in 1989/1990). (App. 154-205). Ninth Circuit's opinion ignores, as did District Court, CIP's and NME's basic property rights in 2003 Agreement

to retain all proceeds of their after-acquired rights to "*other* ... proceeds, recoveries .. as to either compensatory or *punitive damages* ..." such as the "off the top" right to punitive damages which CIP and NME ceded to Exxon in 1989/1990 and re-purchased, for good and valuable consideration, in the 2006 Agreement). (App. 160).

Interpreting and construing 2003 Agreement, Ninth Circuit should have examined all extrinsic evidence and all circumstances surrounding contract. *Estate of Polushkin ex rel. Polushkin v. Maw*, 170 P.3d 162, 166-67 (Alaska, 2007) (Alaska law requires courts interpreting contract consider all relevant extrinsic evidence). Had CIP or NME intended to waive (or Class Counsel/Plaintiffs' Committee intended for them to waive) all rights to punitive damages proceeds as result of EVOS, parties would have provided they release all "after-acquired" rights (not simply rights they "may have" i.e. presently) to proceeds from EQSF as member of mandatory punitive damages class.

If the courts below were correct in holding that CIP and NME intended to waive all rights to collect punitive damage proceeds, from which ever slice of the pie, (i.e., even those not "collected" by Class Counsel/Plaintiffs' Committee), the following provisions in 2003 Agreement are superfluous: (1) CIP and NME releasing rights both "awarded to" and "*collected by*" plaintiffs; (2) express preservation of "*other rights*, claims ... damages, rights to proceeds, recoveries ... as to either compensatory or *punitive damages* ...". (App. 154-205). (emphasis added).

2. *District Court Ignored CIP's and NME's Express Preservation of Right to Obtain Right to Collect "Off the Top" Just Like the Seattle Seven As Approved by the Ninth Circuit.*

District Court in Order 371, properly recognized 2006 Agreement lawfully rescinded CIP's and NME's 1989 and 1990 releases and reconveyed assignments of their punitive damage rights to Exxon, such that Cede Back Rights are effective, but then improperly denied them to CIP and NME. (App. 5-54)

2003 Agreement was culmination of relationship gone sour. Under Plaintiffs' Committee's "matrix" then existing, CIP and NME would not collect punitive damages proceeds. Accordingly, Plaintiffs' Committee agreed to allow them to go their own way, and each party to 2003 Agreement would "eat what it killed." Class Counsel/Plaintiffs' Committee would retain monies it "collected" for distribution under Joint Prosecution and Sharing Agreement. CIP and NME would seek their own share of proceeds to be collected "off the top" such that Class Counsel/Plaintiffs' Committee had no right to collect proceeds for parties it does not represent. Portion of punitive damages judgment attributable to CIP and NME's claims (i.e., their 5% pro rata share), is to be collected "off the top," not by Plaintiffs' Committee.

Ninth Circuit's and District Court's rulings ignore or misconstrue 2003 Agreement as it only applied to then existing rights to specific portion of settlement funds "collected by" Class Counsel/Plaintiffs' Committee, preserving right to seek and retain punitive damage proceeds not

"collected by" Class Counsel/Plaintiffs' Committee (e.g., collected "off the top") in form of Cede Back Rights, to which CIP and NME then had no claim, because such Cede Back Rights, assigned to Exxon in 1989/1990 Agreements, were held by Exxon in 2003, from 1989 to 2006, as holders in due course, for 5% "off the top" share of punitive damage proceeds, just like Seattle Seven.

C. Federal Maritime and Alaska Law Violated.

Should this Court permit Ninth Circuit opinion to stand, Class Counsel/Plaintiffs' Committee will divert CIP/NME punitive damages proceeds to entire class (not just proceeds "collected by" Plaintiffs' Committee) i.e., proceeds directly attributable to CIP's and NME's compensatory damages, allowing signatories to Joint Prosecution and Sharing Agreement (many of whom are directly represented by Class Counsel/Plaintiffs' Committee) to receive windfall far beyond 1:1 ratio contemplated by Court in *Baker*, thus, in violation of federal maritime common law.

Upon remand from this Court following *Baker*, Ninth Circuit was required to remit punitive damages award based on aggregate compensatory damages sustained and collected by all plaintiffs (which includes millions of compensatory damages Class Counsel/Plaintiffs' Committee used to obtain their class settlement with Exxon as to compensatory damages for fish processors). The compensation Exxon paid into EQSF pursuant thereto was not both "awarded to and collected by" Class Counsel/Plaintiffs' Committee, but rather awarded to entire class, of which CIP and NME are vested members entitled to a 5% "off the top" share

"in the shoes" of Exxon as purchasers of Cede Back Rights.

In *Baker*, this Court held a 1:1 ratio is fair upper limit in federal maritime cases. Court held "[a] punitive-to-compensatory ratio of 1:1 ... yields maximum punitive damages in that amount" and remanded case for Court of Appeals to remit punitive damages award accordingly. Id.

Court's justification for adopting a 1:1 ratio was to provide predictability and fairness as to punitive damages awards in maritime cases. This reasoning applies not just to defendants, but to class members in a maritime action as well. Id.; *The Amiable Nancy*, 16 U. S. 546 (1818). The 1989/1990 agreements were the product of economic coercion, and CIP and NME sued Exxon for same, and then settled in 2006 for both EVOS compensatory damages and such economic coercion/punitive damages for 1:1 reconveyence of the Cede Back Rights. Stand-alone plaintiff such as CIP and NME, as well as defendant Exxon, must have the right to bargain for such compensation with a defendant and have such contract enforced by courts. See *Seattle Seven*, 229 F.3d 790; *Four Processors*, 239 F.3d 985; AS §§ 46.03.822 and 824.

D. Constitutional and Federal Statutory Rights Violated.

Discriminatory treatment of CIP and NME by Class Counsel/Plaintiffs' Committee, to deprive them of their substantial portions of the compensatory and punitive damage proceeds, to which they are entitled and promised under this Court decision in *Baker*, 128 S.Ct at 2605 and in the form of a "cede back" mechanism "blessed" by the Ninth Circuit as to fellow fish processors the Seattle Seven and Sea

Hawk in *Seattle Seven*, 229 F.3d 790 and *Four Processors*, 239 F.3d 985, is unconstitutional, unfair, illegal, inequitable, and egregious misuse of Rule 23 of Federal Rules of Civil Procedure.

CIP and NME originally filed suit in state court; removed and required to join certified class in federal court. As such, they are full members of mandatory punitive damages class, and pursuant to a class action certified under FRCP 23(b)(1)(B), they hold due process and equal protection rights. Id.; *Hansberry v. Lee*, 311 U.S. 32, 42, 61 S.Ct. 115, 85 L.Ed. 22 (1940). (General principle is "there has been a failure of due process . . . where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it."); *Gendron v. Shastina Properties, Inc.*, 578 F.2d 1313 (9th Cir. 1978) (Though a class action settlement committee has been set up by compromise agreement approved by the District Court, equity demands that there be proper limits to such discretion); *Rand v. Monsanto Co.*, 926 F.2d 596 (7th Cir. 1991) (courts must insist on conscientious representative plaintiff; all class suits create some conflict between representative and class, and representative and counsel may be tempted to sell out class for their own benefit).

Here, District Court, Class Counsel/Plaintiffs' Committee and EQSF have obligation to ensure allocation of proceeds of Mandatory Punitive Damages Class, whether "off the top" or pursuant to a plan of distribution applicable to signatories to a Joint Prosecution and Sharing Agreement, is "fundamentally fair, adequate and reasonable" to all parties involved. *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)

(emphasis added), cert. denied 459 U.S. 1217 (1983); 26 U.S.C. § 468B. Class Counsel/Plaintiffs' Committee cannot favor their own clients (for recovery of their own contingency fees) at expense of other class members.

Obviously, CIP and NME were a "thorn in the side" of the District Court, Class Counsel/Plaintiffs' Committee and the Ninth Circuit throughout the litigation. Given their unpopular status, Plaintiffs' Committee, District Court and Ninth Circuit ignored or failed to honor CIP's and NME's rights to collect under the 2003 and 2006 Agreements, as holders in due course of the commercial paper as to the Cede Back Rights, as "blessed" by the Ninth Circuit. Courts' error has violated CIP's and NME's rights by ignoring clear distinction between proceeds "awarded to" litigant or class, and proceeds "collected by" litigant or class, and ignored doctrine of after-acquired rights as it relates to settlements, and is a windfall for other class members, who receive more than 1:1.

This violates Due Process, Equal Protection and Right to Jury Trial, by causing "a small minority of the class members ... to bear an unduly disproportionate share of the accompanying burdens" of a class action. *Officers for Justice*, 688 F.2d at 624.

E. Fiduciary Duties To Class Members Violated.

Ninth Circuit's affirmation of District Court's exclusion of CIP and NME from right to collect proceeds of Cede Back Rights purchased, for good and valuable consideration, from Exxon, and Class Counsel/Plaintiffs' Committee's discrimination against them in favor of signatories to Joint

Prosecution and Sharing Agreement (many of whom are clients of members of Plaintiffs' Committee) is violation of fiduciary duties owed by District Court to CIP and NME. Id.; see *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003).

"Under Rule 23(e), the District Court acts as a fiduciary who must serve as guardian of the rights of absent class members." *Grunin v. Int'l House of Pancakes*, 513 F.3d 114, 123 (8th Cir. 1975). It is appropriate for District Court to serve this role as guardian for absent class members because District Court is heavily involved in management of class actions and, therefore, "'is exposed to the litigants, and the strategies, positions and proofs.'" Id. (quoting *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3rd Cir. 1971)).

Pursuant to 26 U.S.C. § 468B(3)(C), EQSF itself (and not Plaintiffs' Committee), must be "treated as the owner of the property in the fund (and any earnings thereon"). As a corporation, the EQSF had and has duty to CIP and NME, to recognize their status as holders of Cede Back Rights (declared by the Ninth Circuit as lawful means of acquiring settlement proceeds) and right to take "off the top" of the EQSF, like Seattle Seven, and to honor the "end of the day" request for payment.

Discrimination by Class Counsel/Plaintiffs' Committee, in violation of fiduciary duty to CIP and NME as class members, is similar to discrimination by which Class Counsel/Plaintiffs' Committee caused "no action" to be taken against their fisherman clients who had signed similar releases/"cede back" agreements to those of CIP and NME, but Class Counsel/Plaintiffs' Committee utilized in first instance to effectively eject CIP and NME from plans

of allocation and distribution of punitive damage proceeds collected by them while maintaining their own fishermen clients' status.

Class Counsel/Plaintiffs' Committee's decision to settle class' compensatory damages for "token" net of $19 million, then approve class' total compensatory damages at $2.2 billion, excluding CIP and NME from any share of Mandatory Punitive Damages Class as signatory of Joint Prosecution and Sharing Agreement and then, after allowing CIP and NME to withdraw from unfair Joint Prosecution and Sharing Agreement, interpret 2003 Agreement as nullifying CIP's and NME's rights to collect "off the top" as non-signatories, such that other class members will receive more than their 1:1 share of punitive damages is unfair, unjust and a violation of Class Counsel/Plaintiffs' Committee's fiduciary duties to CIP and NME.

CONCLUSION

Petition should be granted to correct egregious departure from accepted and usual course of judicial proceedings.

This matter involves important rights of vested class members, in a federal maritime action, to equal nondiscriminatory treatment and constitutional Due Process, Equal Protection, and Jury Trial Rights via 5th, 7th, and 14th Amendments, granted to *any plaintiff* in a civil action, to receive and retain the for value proceeds of their causes of action as holders in due course of "commercial paper" (i.e. "cede back" settlement rights to fruits of "commercial paper" that they have purchased) from Exxon, a settlement mechanism approved of and

encouraged by Ninth Circuit in these mass class actions.

For the reasons stated, this Petition should be granted.

RESPECTFULLY SUBMITTED this 22nd day of December, 2009.

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Supreme Court, U.S.
FILED

09-765 DEC 22 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

No.

In The

SUPREME COURT OF THE UNITED STATES

Polar Equipment Inc., d/b/a Cook Inlet Processing, Inc., and Nautilus Marine Enterprises, Inc.,
Petitioners

v.

Grant Baker, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Document	Page Nos.
Memorandum, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 7/24/2009	1-4
Order 371 In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 7/17/2007	5-54
Order No. 204—Order Granting Conditional Final Approval and Certifying Mandatory Punitive Damages Class, filed in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 4/15/1994	55-63
Order Establishing the Exxon Qualified Settlement Fund and Appointing Administrator in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 1/25/1995	64-72
Order Denying Rehearing and Rehearing En Banc, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir.	

Nos. 07-35794/07-35796 (Consolidated), 9/23/2009 73-75

Order Granting Appellant's Motion to Stay Mandate, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 9/30/2009 76-78

Order Granting Appellees' Motion to Reconsider Stay of Mandate and Denying Stay, In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 10/29/2009 79-81

Mandate In Re the Exxon Valdez: Polar Equipment Inc. d/b/a Cook Inlet Processing, Inc. and Nautilus Marine, Inc. v. Exxon Mobile, U.S.C.A. 9th Cir. Nos. 07-35794/07-35796 (Consolidated), 11/3/2009 82-84

Judgment in a Civil Case in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 8/22/2007 85-86

Alaska Toxic Tort Statute, AS 46.03.822 87-98

Alaska Toxic Tort Statute, Damages, AS 46.03.824 99

Internal Revenue Code, 26 U.S.C. § 468B....100-105

Federal Rule of Civil Procedure 23, Class Actions.....106-115

Nautilus Marine Enterprises, Inc. Recitals to Partial Release/Partial Release, 11/18/1989 116-122

Cook Inlet Processing Partial Release, 5/22/1990 123-126

Complaint in Cook Inlet Processing, Inc. v. Exxon Corporation, et al., Case No. 3AN-91-2445 CV (Alaska State Court), 3/26/1991 127-130

Complaint in Nautilus Marine Enterprises, Inc., v. Exxon Corporation, et al., (Alaska State Court), 9/6/1994.....131-146

Judgment in a Civil Case in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 9/16/1994 147-148

Agreement Among Counsel Regarding Joint Prosecution, Settlement, and Damages Allocation Agreement, 4/18/1995 149-153

Settlement and Mutual Release Agreement and Exhibit A, 12/18/2002 and 1/3/2003 154-205

Excerpt from Settlement Agreement Between Exxon and the Nautilus Marine and Cook Inlet Processing, 9/29/2006 and 10/2/2006 206-209

Motion for Order for Payment and Memorandum in Support by Cook Inlet Processing in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 11/27/2009 210-234

Satisfaction of Judgment in In Re the Exxon Valdez, U.S.D.C. Case No. 3:89-cv-095-HRH, 9/9/2009 235-237

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EXXON VALDEZ,
POLAR EQUIPMENT INC.,
dba Cook Inlet Processing, Inc.
Plaintiff - Appellant,

RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES,
Plaintiffs Appellees,
and

NAUTILUS MARINE, INC.,
Plaintiff,
v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

FILED
JUL 24 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 07-35794
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

MEMORANDUM*

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC., dba Cook Inlet Processing,

Plaintiff,

And

NAUTILUS MARINE, INC.,

Plaintiff - Appellant,

RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES,

Plaintiffs - Appellees,

v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

No. 07-35796
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, District Judge, Presiding

Argued and Submitted June 24, 2009
Seattle, Washington

Before: SCHROEDER, KLEINFELD, and THOMAS, Circuit Judges.

The appellants, Polar Equipment and Nautilus Marine, were two of the original plaintiffs in this litigation, but they split off from the rest of the plaintiffs' class in 2003 to pursue their claims against Exxon individually. As part of their 2003 agreement with the plaintiffs' class, appellants agreed to release their rights to share in any punitive damages recovery "awarded to and collected by" the class. Appellants now contend that the 2003 agreement should not be given effect because their 2006 settlement with Exxon, to which the plaintiffs' class was not a party, said that Exxon "reassigned and restored" Polar Equipment's and Nautilus Marine's rights to share in the class recovery of punitive damages.

In the 2003 agreement with the plaintiffs' class, however, Polar Equipment and Nautilus

Marine agreed to be "bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes," and they agreed to "[w]aive, relinquish and discharge any right of any nature whatsoever which either of them may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to either the Amended Plan of Allocation approved . . . [in] Order No. 351, or the Amended Plan of Distribution of Allocations to the Processor Claim Category approved by the Court in Order No. 352."

In return for giving up their rights to share in any punitive damages recovery by the plaintiffs' class, these appellants were allowed to pursue their claims against Exxon. They settled those claims in 2006 for more than eight million dollars. The appellants do not have to share any of that recovery with the plaintiffs' class but, in return, they remain bound by the terms of the 2003 agreement that they will not share in the punitive damages collected by the rest of the plaintiffs. The appellants' 2006 settlement with Exxon did not affect the validity of the appellants' 2003 settlement with the plaintiffs' class. See *Leroy Land Dev. v. Tahoe Reg'l Planning Agency*, 939 F.2d 696, 698-99 (9th Cir. 1991). The district court correctly so held.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re	)
	)
the EXXON VALDEZ	)
	)
	)
THIS ORDER RELATES TO ALL CASES	)No. 3:89-)0095-cv-HRH
	)
	)

ORDER NO. 371
Motion to Confirm Finality of Order No. 351

All plaintiffs' lead counsel move to confirm the finality of Order No. 351.[1]

This motion is opposed by Cook Inlet processing[2] and Nautilus Marine Enterprises.[3] The Exxon defendants take no position as to the

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[1] Docket No. 8504. Processor claimants M. S. P. Corporation; Prime Alaska Seafoods; Cold Water Harvesters; G. Ginn; Cooper River Fishermen's Cooperative; Alaskan Gourmet; Samer-I-Seafoods; Douglas Latta; All Alaskan Seafoods, Inc.; and Odyssey Enterprises, Inc. join in the motion to confirm the finality of Order 351. See Notice of Filing Joinders, Docket No. 8537

[2] Docket No. 8525.

[3] Docket No. 8521. Cook Inlet Processing has also joined in Nautilus' opposition. See Docket No. 8536.

interpretation of any of the settlement agreements at issue. Oral argument was requested and has been heard.[4]

Background

Cook Inlet Processing and Nautilus Marine Enterprises are seafood processors. Both Cook Inlet and Nautilus were operating in Prince William Sound at the time of the grounding of the Exxon Valdez on March 24, 1989.

In November 1989, Nautilus and Exxon entered into a partial settlement of Nautilus' claims against Exxon (the 1989 agreement). For consideration of $2,245,279, Nautilus agreed to

> ABSOLUTELY AND IRREVOCABLY RELEASE AND DISCHARGE, Exxon Shipping Company, Exxon Corporation... and the M/V EXXON VALDEZ, its officers and crew, from any and all claims, demands and causes of action of every kind and character, whether known or unknown, for damages that may have been or may be sustained by the undersigned with respect to any and

---

[4] Response of Defendants Exxon Mobil Corporation (D-1) and Exxon Shipping Company (D-2) to Court's Order of April 23, 2007 at 1-2, Docket No. 8514.

all losses, injuries, damages, or claims for losses, injuries, or damages arising during the calendar year 1989 (or during 1990 relating and growing out of the undersigned parties' 1989 fishing season business activities or operations)
which are in any way associated with or arise from the incident involving the M/V EXXON VALDEZ on March 24, 1989.... Further, the undersigned expressly release any and all claims for punitive damages in any way associated with the incident involving the M/V EXXON
VALDEZ on March 24, 1989, including any oil containment or clean-up procedures that followed. The undersigned expressly except and reserve all claims, demands and causes of action of every kind and character, other than those released herein....
In further consideration of the payment stated above, the undersign hereby assign, sell, transfer and subrogate to Exxon Shipping Company, without limitation, any and all rights, claims, interest and causes of action known or unknown, for Exxon Shipping Company's own use and benefit, that the undersigned

> have or may have in respect to the claims described above against any person, corporation or governmental agency, including any liability fund that may be available for the payment of damage claims [5]

On September 6, 1994, Nautilus filed a state-court complaint against Exxon in which it asserted post-1989 claims. The state-court complaint was subsequently removed to this court.

Cook Inlet filed a direct action lawsuit in federal court against Exxon Corporation, Exxon Shipping Company, and Alyeska Pipeline Service Co. on March 30, 1989. On May 1990, Cook Inlet entered into a partial settlement of its claims against Exxon (the 1990 agreement).[6] For consideration of $2,850,000, Cook Inlet agreed to

> ABSOLUTELY AND IRREVOCABLY RELEASE[] AND DISCHARGE[] Exxon Corporation, Exxon Shipping Company, Exxon-Pipeline Company ... and the M/V EXXON VALDEZ, its officers and

---

5 1989 Agreement at 2-3, Exhibit B, Declaration of David W. Oesting, Docket No. 8546 (emphasis added).

6 1990 Agreement, Exhibit 6, Declaration of Wayne D. Hawn, Docket No. 8526.

crew (hereinafter collectively referred to as "Exxon"), from all claims, demands and causes of action of every kind and character (whether known or unknown, or yet to occur), for all damages costs, expenses, fees, and all other injuries incurred during the calendar year 1989 and during 1990 up to the date of execution of this Partial Release ... , and all punitive damages of any kind arising at any time, that (a) are associated with or arise from the incident involving the M/V EXXON VALDEZ on March 23-24, 1989, (b) arise out of any and all oil-containment or cleanup procedures that preceded or followed the incident involving the M/V EXXON VALDEZ, or (c) are based on representations made at any time prior to or during the course of any oil spill response procedure. The sum stated above is accepted by Cook Inlet Processing in full settlement of the claims described above ....

In further consideration of the payment stated above, Cook Inlet Processing hereby assigns, sells, transfers and subrogates to Exxon Corporation, without limitation, any and all rights, claims, interests and causes of action, known or unknown, for Exxon Corporation's own use and benefit, that Cook Inlet Processing has or may have,

> in respect to the claims described in paragraph 1 above, including punitive damage claims, against any person or corporation other than Exxon, or any governmental agency, including any liability fund that may be available for payment of damage claims. [7]

On March 26, 1991, Cook Inlet filed a complaint in state court, in which it asserted its right to recover damages incurred after May 1990. Cook Inlet's 1991 state-court complaint was subsequently removed to this court.

On January 26, 1994, the court dismissed the claims of the seafood processors, on motion for summary judgment,[8] holding that the seafood processors' claims were barred by Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927), which precludes recovery of economic losses absent physical damage to a proprietary interest. The court entered judgment on these claims on September 18, 1996.[9] An appeal was taken, and on November 7, 2001, the Ninth Circuit reinstated the processors' claims. See In re Exxon Valdez, 270 F.3d 1215, 1253 (9th Cir. 2001).

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7 Id. at 1-2.

8 See Order No. 174, Docket No. 4444.

9 Docket No. 6909.

On April 15, 1994, the court certified a mandatory punitive damages class.[10] "The class consists of all persons or entities who possess or have asserted claims for punitive damages against Exxon and/or Exxon Shipping which arise from or relate in any way to the grounding of the EXXON VALDEZ or the resulting oil spill."[11]

In the summer of 1994, Cook Inlet and Nautilus's counsel signed the Joint Prosecution, Settlement, and Damages Allocation Agreement.[12] Counsel agreed that "[a]ll recoveries from defendants by any plaintiff or group of plaintiffs, whether by settlement or trial, will be shared among all plaintiffs (whether their claims survive or are dismissed and are subject to appeal at the time of payment) in accordance with the allocation matrix attached ...."[13] The allocation matrix provided that the seafood processors would receive 2.1% of any recoveries.[14] Cook Inlet and Nautilus' counsel also signed a subsequent agreement in 1995 regarding

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10 See Order No. 204 (Order Granting Conditional Final Approval and Certifying Mandatory Punitive Damages Class), Docket No. 4856.

11 Id. at 2.

12 Exhibit 17, Hawn Declaration, Docket No. 8528.

13 Id. at 1, ¶2a.

14 Id. at 10.

joint prosecution, settlement, and damages allocation.[15]

In January 1996, all plaintiffs settled their Phase IV claims[16] with Exxon.[17] The Phase IV settlement agreement provided for the dismissal of all Phase IV claims in exchange for a total of $3,507,981. However, because Exxon was entitled to an offset, the settlement resulted in a zero net recovery for all plaintiffs. The court approved the Phase IV settlement on June 11, 1996.[18]

On June 11, 1996, the court approved the Plaintiffs' Plan of Allocation of Recoveries Obtained by Plaintiffs in Litigation Arising from the Exxon Valdez Oil Spill.[19] The Allocation Plan established the allocation of recoveries among the "signatory"

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15 Exhibit 18, Hawn Declaration, Docket No. 8528.

16 The Phase IV claims involved "a great variety of individual claims, including claims of commercial fishermen for species other than salmon and herring, personal injury claims, aquaculture association claims, and landowner claims." Order No. 318 (Motion for Final Approval of the Phase IV Settlement) at 2, n.6, Docket No. 6807. (A copy of Order No. 318 is attached as Exhibit F to Oesting Declaration, Docket No. 8546.)

17 See Docket No. 6596.

18 Docket No. 6807.

19 Order No. 317, Docket No. 6806.(A copy of Order No. 317 (continued...) is attached as Exhibit 25 to Hawn Declaration, Docket No. 8530

plaintiffs and "non-signatory" plaintiffs. Signatory plaintiffs were those who had signed the joint prosecution agreement. The signatory plaintiffs were organized into claim categories, one of which was the seafood processor category. The non-signatory plaintiffs on June 11, 1996 consisted of four pro per plaintiffs, a group of Native Corporations, and the Seattle Seven, a group of seven seafood processors which had settled their claims against Exxon. "For each Claim Category, Matrix damages were determined by quantifying actual damages suffered as a proximate result of the oil spill.[20] "A Matrix share was then calculated as a ratio of the Claim Category Matrix Damages to the sum total of all Claim Categories' Matrix Damages."[21] "The Matrix Share will be applied to distribute all recoveries including punitive and compensatory damages....[22] Compensatory damages under the Plan of Allocation included lost profits from 1989 through 1995 caused by the oil spill. The Processor Claim Category's Matrix Share was determined to be 2 .1%. In other words, the processors were entitled to receive 2.1% of the punitive damages award under the Plan of Allocation. The Plan of Allocation does not contain a list of the seafood processors which were signatory plaintiffs, although Cook Inlet and Nautilus were signatory plaintiffs because their counsel had signed the joint prosecution agreement.

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20 Id. at 4-5 (footnote omitted).

21 Id. at 5.

22 Id.

In approving the Plan of Allocation, the court addressed objections from various parties, including the Seattle Seven. The Seattle Seven asserted that they should be included in the Plan of Allocation. The 1991 settlement agreement between the Seattle Seven and Exxon provided:

> 1f. By entering into this Agreement Claimants and Exxon intend to compromise and settle all presently existing claims for actual damages and all claims whatsoever for punitive damages, if any, arising out of the grounding of the EXXON VALDEZ.
>
> 4b. As consideration for Exxon's Payments, Claimants agree to take all reasonable, lawful and ethical ... actions to assist Exxon so that Exxon may recapture or obtain a creditor offset for any punitive damages, awards, settlements, and claims against Exxon and Alyeska to which Claimants may have been entitled. If Exxon requests, Claimants will undertake to participate in any consolidated or class proceeding against Exxon, and/or against Alyeska, in which the plaintiffs seek punitive damages, and will assert Claimants' entitlements to allocated portions of any punitive awards or settlements on the same basis as all other plaintiffs to that

> action.... Claimants also hereby assign respectively to Exxon and Alyeska any rights they may ultimately obtain to a punitive damages award against Exxon or Alyeska, Claimants' and Exxon's intent being that any such punitive damage proceeds to which Claimants become entitled will inure to Exxon's and Alyeska's benefit to the extent that each of those entities would have otherwise been liable to Claimants for punitive damages.
> 6. This Agreement is not to be construed as a release of any parties to the litigation relating to the oil spill. [23]

A 1996 amendment to the Settlement Agreement "provided that if the Seattle Seven were successful in receiving an allocation of punitive damages, Exxon would allow the Seattle Seven to keep a small share of the punitive damages.[24] The Seattle Seven thus argued that they were entitled to inclusion in the Plan of Allocation and that they were entitled to receive 14.9% of the punitive damages which had

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23 Settlement Agreement at 2, 4, and 5, Exhibit 1 to Certain Seafood Processors Objections to and Memorandum Opposing Approval Plan of Allocation, which is attached as Exhibit K to Declaration, Docket No. 8546.

24 Order No. 317 at 24, Docket No. 6806

been awarded to the mandatory punitive damage class.

The court determined that the Seattle Seven were not entitled to be included in the Plan of Allocation because the "cede" back provision of their settlement agreement had been kept from the jury.[25] The Seattle Seven appealed. The court of appeals held "that [this court] abused its discretion in approving the plan of allocation over the Seattle Seven's objection." In re Exxon Valdez, 229 F.3d 790, 800 (9th Cir. 2000) (Seattle Seven). The court of appeals found that the Seattle Seven settlement agreement did not contain a release of the Seattle Seven's claims against Exxon and "therefore did not formally terminate the Seattle Seven's claims against Exxon." Id. at 792. The court of appeals held that" [c]ede back agreements are lawful and enforceable, and generally should not be disclosed to the jury." Id. at 800. The court of appeals concluded that "the existence of the cede back agreement cannot justify exclusion of the Seattle Seven from the plan of allocation." Id. at 801.

On May 13, 1997, all plaintiffs filed a proposed Plan of Distribution of Allocations to the Processor Claim Category.[26] The proposed Plan of Distribution identified 33 signatory seafood processors entitled to participate as claimants in the Processor Claim Category. Cook Inlet and Nautilus

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25 Id. at 29-31

26 Docket No. 7010.

were among the 33 signatory seafood processors.[27] Under the proposed Plan of Distribution, Cook Inlet and Nautilus were not entitled to recover any compensatory damages for 1989 because they had settled their 1989 compensatory damages claims with Exxon.[28] Under the proposed Plan of Distribution, Cook Inlet and Nautilus were also not allowed to share in the punitive damages award because they had settled their punitive damages claims with Exxon as well.[29] Under the proposed Plan of Distribution, four other seafood processors[30] were also not allowed to share in the punitive damages award because they had assigned their punitive damages claims to Exxon.

Objections to the proposed Processor Plan of Distribution were filed by Cook Inlet, Nautilus, Exxon, Western Fisheries, Inc., and others. Cook Inlet and Nautilus objected to being excluded from the distribution of punitive damages because they argued that they had only released their 1989

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27 Proposed Plan of Distribution of Allocations to the Processor Claim Category, Exhibit 5 at 17, Hawn Declaration, Docket
No. 8526.

28 Id. at 12.

29 Id. at 12-13.

30 The four processors were Western Alaska Fisheries, Inc.; Cooper River Fishermen's Cooperative; Sea Hawk Seafoods; and Kodiak Salmon Packers, Inc.

punitive damage claims and their partial releases were not actually releases but covenants not to sue. They also raised an argument that they could not release their punitive damage claims and then assign those claims to Exxon because if the claims were released, there was nothing left to assign. Exxon objected to the four processors[31] being excluded from sharing in the punitive damages because they had assigned their punitive damages claims to Exxon. Western Fisheries raised its own objection to the proposed Plan of Distribution because it was excluded from the Distribution Plan altogether because it had never filed a lawsuit against Exxon. Under the proposed Plan of Distribution, in order to be a "participating" processor, a processor had to "have filed a timely lawsuit on its own behalf as a direct action plaintiff or putative class representative on or before September 7, 1994[.][32] Western argued that it met the definition of a class member for the mandatory punitive damages class and thus should be allowed to share in the distribution of the punitive damages class award.

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31 Cooper River, Sea Hawk, and Kodiak Salmon were among the 33 signatory seafood processors. Western was not because it did not meet the criteria to be a "participating" seafood processor

32 Proposed Processor Plan of Distribution, Exhibit 5 at 11, Hawn Declaration, Docket No. 8526.

On July 23, 1999, in Order No. 348, the court approved the Processor Plan of Distribution.[33] The court rejected the objections of Cook Inlet and Nautilus because they had released all of their punitive damages claims against Exxon.[34] The court rejected Exxon's objections because it did not intend to let Exxon share in the punitive damages award.[35] The court also rejected Western's objection because it concluded that requiring a processor to timely file a lawsuit in order to participate in the distribution of punitive damages was fair.[36]

Cook Inlet, Nautilus, Western, and Exxon appealed Order No. 348. The court of appeals disposed of Cook Inlet and Nautilus' appeals in an unpublished one-page memorandum decision, In re Exxon Valdez, Case Nos. 99-35864, 99-35866, 2000 WL 1844460 (9th Cir. Dec.14, 2000). The court of appeals held that this court "did not abuse its discretion when it approved the plan which excluded the processors from punitive damage recovery based on the release language." Id. at *1.

The court of appeals also dealt with Western's appeal in an unpublished memorandum decision. Sea Hawk Seafoods, Inc. v. Exxon Corp., Case No. 99

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33 Docket No. 7319. (A copy of the order is attached as Exhibit 22 to the Hawn Declaration, Docket No. 8529.)

34 Id. at 6.

35 Id. at 5.

36 Id. at 5-6.

358781, 2000 WL 1860726 (9th Cir. Dec. 18, 2000). The court of appeals held that the "timely lawsuit" requirement was an impermissible addition to the definition of the mandatory punitive damage class. Id. at *1. The court of appeals vacated the "timely lawsuit" requirement in the seafood processor plan of distribution and remanded with "instructions to allow Western Alaska to share in the punitive damages recovery on the same basis as the other 33 eligible seafood processors." Id. at *2.

The court of appeals dealt with Exxon's appeal in a published decision, In re Exxon Valdez, 239 F. 3d 985 (9th Cir. 2001). The court of appeals determined that the issue of "whether Exxon may enter into a settlement agreement that permits it to recoup damages assessed against itself" was controlled by the earlier Seattle Seven decision. Id. at 988. The court of appeals held that this court had erred "in refusing to permit Exxon to share in the punitive damages award." Id. The court of appeals thus vacated Order No. 348 and remanded the matter to this court for enforcement of Exxon's settlement agreement with the four processors. Id. at 988-989.

On remand, this court directed the parties to propose a plan for whatever further proceedings might be necessary.[37] In response, all plaintiffs submitted a motion to approve and enter a stipulation which would amend the Allocation Plan

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[37] Order No. 350, Docket No. 7356.

and a motion to approve an amended Processor Distribution Plan.

The proposed Amended Allocation Plan was based on a stipulation between all plaintiffs, Exxon, and the Seattle Seven, in which it was agreed that the Seattle Seven would be allocated eleven percent of the total amount of punitive damages awarded to the mandatory punitive damages class.[38] Oppositions to the Amended Allocation Plan were filed by several parties, including Cook Inlet and Nautilus.[39] Cook Inlet and Nautilus argued that because the Ninth Circuit had vacated the Allocation Plan, the process had to start anew, which would include drafting a new allocation plan, providing notice to class members again, and allowing claimants to raise objections again. In particular, Cook Inlet and Nautilus argued that they should be allowed to litigate the validity of their releases with Exxon.[40] Cook Inlet and Nautilus also argued that the Seattle Seven did not have standing to share in the allocation of punitive damages because they were

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38 Stipulation and Order for Amendment of Plan of Allocation and Fixing of Seafood Processors' Share and Cede Back at 5,
attached to Motion for Order Approving and Entering Stipulation and Order for Amendment of Plan of Allocation and Fixing of Seafood Processors' Share and Cede Back, Docket No. 7366

39 Docket No. 7384.

40 Id. at 9-13.

not signatories to the Joint Prosecution Agreements and because they did not have viable claims.[41]

On February 12, 2002, the court entered Order No. 351, in which it approved the Amended Plan of Allocation.[42] In Order No. 351, the court recognized that there were three basic arguments raised in the objections that were filed to the Amended Allocation Plan:

> (1) The Seattle Seven should not be allowed to participate in the Plan of Allocation; (2) Additional notice should be provided concerning the proposed amended Plan of Allocation; and (3) the Seafood Processor's Plan of Distribution should be fully re-litigated. [43]

The court rejected all three arguments. The court found the argument concerning the Seattle Seven meritless because that issue had been fully litigated in this court and in the court of appeals and the court of appeals had mandated that the Seattle Seven be allowed to participate.[44] The court concluded that further notice to the class was unnecessary.[45] And finally, the court rejected Cook

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41 Id. at 6.

42 Docket No. 7441.

43 Id. at 3.

44 Id. at 3-4.

45 Id. at 4.

Inlet and Nautilus's argument that they should be permitted to relitigate whether they were entitled to share in the punitive damages award.[46] The court held that the law of the case doctrine prohibited relitigation of Cook Inlet and Nautilus's contention that their releases with Exxon were invalid due to economic duress and waiver.[47] The court also rejected Cook Inlet and Nautilus's attempt to withdraw from the Phase IV settlement because that settlement was final.[48]

In addition to entering Order No. 351, the court also entered a separate order on the stipulation, in which the court approved the Amended Allocation Plan and directed "the entry of judgment on those claims as provided in the Stipulation and this Order."[49] The court also indicated that it was "retain[ing] continuing jurisdiction to enforce or interpret the Stipulation and this Order."[50] On February 19, 2002, the court entered a final judgment based on Order No. 351 and the Order on Stipulation.[51] The final judgment deals only with the Amended Plan of Allocation and

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46 Id. at 4.

47 Id. at 5.

48 Id. at 6-7.

49 Order on Stipulation at 1, Docket No. 7428A. (A copy of this order is attached as Exhibit 24 to Hawn Declaration, Docket No. 8529.)

50 Id. at 2.

51 Docket No. 7446.

the Seattle Seven. The final judgment that was entered as a result of Order No. 351 and the Order on Stipulation does not expressly mention Cook Inlet or Nautilus.

As mentioned above, in addition to filing a motion for approval of the Amended Allocation Plan, all plaintiffs also filed a motion for approval of an Amended Processor Distribution Plan. The proposed Amended Plan of Distribution included Western on the same terms as other similarly situated processors, allowed the four processors to share in the distribution of punitive damages, and proposed a specific "final percent share" for the Processor Claim Category.[52] The proposed Amended Plan of Distribution continued to exclude Cook Inlet and Nautilus from sharing in the punitive damages class award.[53] It also provided that Cook Inlet and Nautilus would not be entitled to any further distribution of proceeds, i.e., that their recovery for compensatory damages would be limited to the

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52 Amended Plan of Distribution of Allocations to the Processor Claim Category at 4, Exhibit A, All Plaintiffs' Lead Counsel's Motion for Order Approving the Amended Plan of Distribution of Allocations to the Processor Claim Category and Approving Stipulation for Amendment of Processor Plan of Distribution and Fixing of Shares of Certain Signatory Processors, Docket No. 7372. (A copy of this motion is attached as Exhibit 2 to Hawn Declaration, Docket No. 8526)

53 Id. at 7.

amount they had already received from their settlements with Exxon and from the Alyeska settlement.[54]

Various parties filed objections to the proposed Amended Distribution Plan, including Cook Inlet and Nautilus.[55] Cook Inlet and Nautilus raised the same arguments as they had in their objection to the proposed Amended Allocation Plan.

On February 12, 2002, the same day on which the court approved the Amended Allocation Plan, the court approved the Amended Processor Distribution Plan in Order No. 352.[56] The court rejected Cook Inlet and Nautilus's arguments as to the amended Plan of Distribution for the same reasons it rejected them in Order No. 351.[57]

Cook Inlet and Nautilus appealed from Order Nos. 351 and 352. Exxon, joined by all plaintiffs, moved to dismiss the appeal of Order No. 352 because Order No. 352 was not a final judgment. Cook Inlet and Nautilus conceded that Order No. 352 was not a final judgment but argued that the court of appeals had jurisdiction of Order No. 352 because it was intertwined with Order No. 351. The court of appeals denied the motion to dismiss and set a briefing schedule. The case was stayed shortly

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54 Id. at 7-8

55 See Docket No. 7414

56 Docket No. 7443.

57 Id. at 4-5.

thereafter and no briefing on the merits was ever filed.

Some time after their claims were reinstated in 2001, Cook Inlet and Nautilus requested to withdraw from the Joint Prosecution Agreement so they could pursue their claims against Exxon on their own. On January 3, 2003, Cook Inlet and Nautilus entered into a settlement agreement and mutual release agreement with all plaintiffs and their counsel (the 2003 agreement),[58] which allowed Cook Inlet and Nautilus to "walk away" from the Joint Prosecution Agreement. The purpose of the 2003 agreement was

> to resolve all extant disputes ... including, as to actual or potential claims between the parties hereto, all positions taken or which could have been taken, contentions made or which could have been made, or arguments advanced or which could have been advanced in the record of all court and related proceedings leading to entry of [Order Nos. 317, 327, 348, 351, and 352] and all actual or potential claims between the parties hereto asserted or which could have been asserted between and/or against any of the parties hereto, by any of the parties hereto, whether or not appearing in the record of the

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58 Exhibit 20, Hawn Declaration, Docket No. 8529.

> foregoing proceedings and pleadings at the United States Supreme Court, Ninth Circuit, and U. S. District Court levels. [59]

Under the terms of the 2003 settlement, Cook Inlet and Nautilus agreed

1) to seek dismissal of their appeals of Order Nos. 351 and 352;[60]
2) that they had no "right to participate in any distribution of or receive any share of any punitive damages awarded to and collected by Plaintiffs";[61]
3) to "waive, relinquish, release and discharge any and all rights of any nature whatsoever which they contend they may have to participate in any distribution of or receive any share of any punitive damages awarded to and collected by Plaintiffs";[62]
4) that they "are bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes";[63]
5) to "[w]aive, relinquish and discharge any right of any nature whatsoever which either of them may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to

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59 Id. at 2-3.

60 Id. at 3

61 Id.

62 Id. at 4

63 Id.

either the Amended Plan of Allocation ... or the Amended Plan of Distribution of Allocations";[64]
6) that they were preserving all punitive damages[65] not the subject of the "Certified Mandatory Punitive Damages Class Judgment";[66] and
7) to "[r]elease the Plaintiffs' Committee and all attorney members of same, and all attorneys for the class(es) and Plaintiffs from any potential or actual claims, causes of action, damages or suits.[67]

The release language of the 2003 agreement provides that each of Cook Inlet and Nautilus

> hereby releases and fully discharges Plaintiffs . . . from every claim, demand, liability, action and cause of action whatsoever, of every kind and nature, whether arising out of contract, tort, statute or otherwise, in law or in equity, including any claims for compensatory, special, liquidated and punitive damages, penalties, costs, expenses, an attorneys' fees, and other types of loss

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64 Id.

65 Nautilus and Cook Inlet asserted claims for punitive damages against Exxon based on economic duress.

66 2003 Settlement Agreement at 4-5, Exhibit 20, Hawn Declaration, Docket No. 8529.

67 Id. at 5.

> or losses, whether presently known or unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, arising or alleged to arise out of, or in any way relating to any of the facts which are the subject of the Extant Disputes resolved by this Agreement. [68]

The 2003 agreement further provides:

> The intention of the parties being to fully, completely and forever settle, compromise, release and discharge all claims released herein, each party warrants that it will not, by itself or in concert with others, maintain or cause to be maintained any demands, actions, lawsuits, arbitrations, or any other proceedings against the other party in any capacity whatsoever as a result of or pertaining to the claims released and discharged herein. [69]

On January 10, 2003, Cook Inlet and Nautilus moved to dismiss their appeals of Order Nos. 351 and 352 as required by the 2003 agreement. On January 27, 2003, an order was entered dismissing their appeals.

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68 Id. at 7.

69 Id. at 8.

On September 18, 2006, Cook Inlet and Nautilus settled their damage claims for years other than 1989 and 1990 with Exxon (the 2006 agreement).[70] Paragraph 3.9 of the 2006 agreement provides:

> Any releases of claims for punitive damages given to Exxon by [Cook Inlet and Nautilus] in 1989 and 1990 are rescinded and set aside, and any claims for punitive damages assigned to Exxon by [Cook Inlet and Nautilus] in 1989 and 1990 are reassigned and restored to them. [71]

In 2007, based on this rescission and reassignment, Cook Inlet and Nautilus requested that all plaintiffs allow them to share in the punitive damages class award. Cook Inlet asserted that it "is entitled to those full Matrix punitive damages/shares of the Exxon Valdez grounding punitive damage award/proceeds ... and should share fully in such amounts under the plan of distribution to the processor class."[72] Nautilus "requested

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70 Exhibit 15, Hawn Declaration, Docket No. 8528.

71 Id. at 10.

72 Letter from Phillip Paul Weidner, Weidner & Associates, P.C. to David W. Oesting, Davis Wright Tremaine, LLP; Matthew D. Jamin, Jamin Ebell Schmidt & Mason; and Brian B. O'Neill, Faegre &

reinstatement of its share of the punitive damage judgment proceeds."[73]

All plaintiffs' lead counsel now move for "a declaration that Order 351 is a final judgment precluding further litigation with regard to [Cook Inlet] and Nautilus' right to share in the punitive damages award and that [Cook Inlet] and Nautilus waived all rights to a share of any punitive damages recovered by the Mandatory Punitive Damages Class in the 2003 Settlement Agreement.[74]

Jurisdiction

All plaintiffs bring the instant motion pursuant to the Declaratory Judgment Act, which provides "[i]n a case of actual controversy within its jurisdiction ... any court of the United States ... upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration[.]" 28 U.S.C. § 2201(a). When faced with such a pleading, the court "must first inquire whether there is an actual case or controversy within its jurisdiction." Principal Life

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Benson at 4-5, Exhibit C, Oesting Declaration, Docket No. 8505.

73 Letter from Edward P. Weigelt, Jr. to David Oesting, Davis Wright Tremaine, LLP; Matthew D. Jamin, Jamin Ebell Schmidt & Mason; and Brian B. O'Neill, Faegre & Benson at 2, Exhibit D, Oesting Declaration, Docket No. 8505.

74 No. 8504. Motion to Confirm Finality of Order 351 at 16-17, Docket

Ins. Co. v. Robinson, 394 F.3d 665, 669 (9th Cir. 2004). "The requirement that a case or controversy exist under the Declaratory Judgment Act is 'identical to Article III's constitutional case or controversy requirement. '" Id. (quoting American States Ins. Co. v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994).

There is an actual controversy here. The conflicting contentions of the parties as to whether Cook Inlet and Nautilus can share in the punitive damages class award is a real, substantial controversy between parties having adverse legal interests. There is a definite and concrete dispute; Cook Inlet and Nautilus believe that they are now entitled to share in the punitive damages class award; all plaintiffs believe that they are not. There is nothing hypothetical or abstract about the dispute between Cook Inlet and Nautilus and all plaintiffs.

Having found that an actual case or controversy exists, "the court must decide whether to exercise its jurisdiction by analyzing the factors set out in Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942), and its progeny." Principal Life Ins., 394 F.3d at 669. If the district court fails to articulate its reasons for exercising its discretionary jurisdiction, the Ninth Circuit will remand. Id.

> The Brillhart factors are non-exclusive and state that, [1)] [t]he district court should avoid needless determination of state law issues; [2)] it should discourage litigants from filing declaratory actions as a means of forum

> shopping; and [3)] it should avoid duplicative litigation. Essentially, the district court must balance concerns of judicial administration, comity, and fairness to the litigants.

Id. at 672 (citations omitted). The Ninth Circuit also considers

> "whether the declaratory action will settle all aspects of the controversy; whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue;
> whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage; or whether the use of a declaratory action will result in entanglement between the federal and state court systems. In addition, the district court might also consider the convenience of the parties, and the availability and relative convenience of other remedies."

Id. (quoting Gov't Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1225 n.5 (9th Cir. 1998).

There is no reason why the court should not exercise its jurisdiction here. This is not a case involving forum shopping or a case in which a party

is attempting to have a federal court rather than a state court decide an issue. This court will have to decide whether Cook Inlet and Nautilus are entitled to share in the punitive damages class award at some point and it makes little difference that it was all plaintiffs who brought the issue before the court, rather than Cook Inlet and Nautilus.

In addition, this is a class action with a mandatory punitive damages class. The court has on-going jurisdiction over and responsibility for the administration of the punitive damages class. Moreover, the court retained jurisdiction over the Stipulation and the Order on the Stipulation that was entered at the same time as Order No. 351 and the court still has jurisdiction over Order No. 352 because that order is not a final order. For all the forgoing reasons, the court has jurisdiction to decide the issue presented by the instant motion.

Procedural or Substantive Motion

Nautilus objects to all plaintiffs' use of a "procedural motion" to bring this issue before the court and argues that the use of a procedural motion in this matter is inappropriate and does not provide it with an adequate opportunity to address the issue at hand. Nautilus' contention that all plaintiffs' motion is a "procedural motion" seems to be based on the fact that all plaintiffs are asking the court to confirm the finality of Order No. 351, which Nautilus interprets as a "procedural matter". But, Nautilus contends that the instant motion is really "a thinly veiled attempt to adjudicate and modify [Nautilus']

substantive legal rights.[75] Nautilus contends that all plaintiffs should have brought this matter before the court via a motion for summary judgment and suggests that its due process rights will be violated if the court interprets and/or enforces any of the settlement agreements via an order as a result of all plaintiffs' motion.

Regardless of how all plaintiffs have labeled their motion or styled their request for relief, all plaintiffs are asking the court to decide whether Nautilus and Cook Inlet are entitled to share in the punitive damages class award. All plaintiffs are asking the court to decide Cook Inlet's and Nautilus' legal rights, which makes this a substantive motion, not a procedural motion. But, whether this is a "procedural motion" or a "substantive motion" is of little import, as long as the court had jurisdiction to entertain the motion, which it does.

Nautilus suggests that there might be some due process problems because it has not had time to take discovery "which may be material to the validity or intent of [the] agreement[s].[76] The issue before the court primarily involves the interpretation of the various settlement agreements. The parties have submitted declarations and other evidence of intent that the court has considered. The court does

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75 Nautilus Marine's Response to All Lead Plaintiffs' Counsel's Motion to Confirm Finality of Order 351 at 8, Docket No. 8521.

76 Id. at 18.

not perceive that there are any material facts in dispute and thus Nautilus' assertion of a due process violation falls short.

Res Judicata

Turning to the merits of all plaintiffs' motion, all plaintiffs first argue that Cook Inlet and Nautilus are barred by the doctrine of res judicata from challenging the terms of Order Nos. 351 and 352. All plaintiffs cite to numerous cases that stand for the proposition that if a party has dismissed its claims pursuant to a settlement agreement, that dismissal acts as a final judgment on the merits and the party is barred from bringing the same claims in another action. See Int'l Union of Operating Engineers-Employers Constr. Indus. Pension, Welfare & Training Trust Funds v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993); Green v. Ancora-Citronelle Corp., 577 F.2d 1380, 1383 (9th Cir. 1978); Nemaizer v. Baker, 793 F.2d 58, 62 (2d Cir. 1986).

The doctrine of res ludicata has no application here. "Res judicata involves both claim preclusion and issue preclusion." United States v. Oregon, 470 F.3d 809, 817 (9th Cir. 2006). "Under claim preclusion, a subsequent action is precluded if the same claim was previously litigated." Id. Under issue preclusion, a party is precluded from relitigating an issue that was actually litigated in a prior action. Id. In other words, res judicata applies when there are two lawsuits involving the same claim or the same issue. Here, there has not been two lawsuits. All of the proceedings at issue have been part of the same lawsuit.

Law of the Case

All plaintiffs next argue that the law of the case doctrine bars Cook Inlet and Nautilus from contending that they did not release their punitive damages claims against Exxon in the 1989 and 1990 agreements. Under the law of the case doctrine, "a court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case." United States v. Thrasher, 483 F.3d 977, 981 (9th Cir. 2007). "For the doctrine to apply, the issue in question must have been decided explicitly or by necessary implication in the previous disposition." Id. "[T]he law of the case doctrine is subject to three exceptions that may arise when '(1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial.'" Minidoka Irrigation Dist. v. Dep't of Interior of U.S., 406 F.3d 567, 573 (9th Cir. 2005) (quoting Old Person v. Brown, 312 F.3d 1036, 1039 (9th Cir. 2002)).

All plaintiffs contend that it is the law of the case that the 1989 and 1990 settlements gave Exxon "full punitive damage releases." In re the Exxon Valdez, 2000 WL 1844460, at *1. Cook Inlet and Nautilus contend that the law of the case doctrine has no application here because the court retained jurisdiction over the Order No. 351 and because Order No. 352 is not a final order. The law of the case "doctrine simply does not impinge upon a

district court's power to reconsider its own interlocutory order provided that the district court has not been divested of jurisdiction over the order." City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 888 (9th Cir. 2001).

Although as a general principle Cook Inlet and Nautilus are correct that the court may reconsider its prior rulings as long as it retains jurisdiction over the case, this court cannot "'reconsider a question decided by an appellate court.'" United States v. Smith, 389 F.3d 944, 949 (9th Cir. 2004) (quoting Santa Monica Baykeeper, 254 F.3d at 888-89). The court of appeals decided that in the 1989 and 1990 agreements Cook Inlet and Nautilus released their punitive damage claims against Exxon. That issue cannot be reconsidered unless one of the exceptions to the law of the case doctrine applies. See In re Rainbow Magazine, Inc., 77 F.3d 278, 281 (9th Cir. 1996).

As to the narrow issue of whether Cook Inlet and Nautilus released their punitive damages claims against Exxon in the 1989 and 1990 agreements, none of the law of the case exceptions apply. There is no new evidence as to the 1989 and 1990 agreements, although Nautilus suggests that there is new evidence in the form of the declarations of M. Thomas Waterer, president of Nautilus, that relate to the intent of the parties.[77] But, nothing in Mr. Waterer's declarations could be considered "new" evidence. Mr. Waterer's declarations deal with

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[77] See Docket Nos. 8522 and 8523.

matters that Mr. Waterer knew before the proceedings that led to Order Nos. 351 and 352. There is no intervening law; and the ruling that Cook Inlet and Nautilus had released their punitive damages claims in the 1989 and 1990 agreements is not clearly erroneous. The 1989 and 1990 agreements plainly provide that Cook Inlet and Nautilus are releasing their punitive damage claims against Exxon.

However, as to the broader issue of whether Nautilus and Cook Inlet are entitled to share in the punitive damages class award, the law of the case doctrine does not preclude the court from reconsidering this issue because there is new evidence that relates to this issue, in the form of both the 2003 agreement and the 2006 agreement. The court is not precluded from reconsidering whether, based on events subsequent to Order Nos. 351 and 352, Cook Inlet and Nautilus are now entitled to share in the punitive damages class award. Because the court concludes that it is not precluded from reconsidering the broader issue of whether Cook Inlet and Nautilus are entitled to share in the punitive damages class award, the court need not address Cook Inlet's argument that the law of the case doctrine has no application here because no court has previously addressed the "assignment" provisions of the 1989 and 1990 agreements.

2006 Agreement

Cook Inlet and Nautilus contend that it is the 2006 agreement that has created changed circumstances as to their punitive damage claims

against Exxon and their right to share in the punitive damages class award. In paragraph 3.9 of the 2006 agreement, Cook Inlet's and Nautilus' 1989 and 1990 releases are rescinded and Exxon reassigns any claims that were assigned in the 1989 and 1990 agreements to Cook Inlet and Nautilus. Specifically, the 2006 agreement provides that "[a]ny releases of claims for punitive damages given to Exxon by [Cook Inlet and Nautilus] in 1989 and 1990 are rescinded and set aside[.]"[78] Cook Inlet and Nautilus contend that this provision of the 2006 agreement negated the release language of the 1989 and 1990 agreements and thus they cannot now be deemed to have released their punitive damages claims against Exxon. If they have not released their punitive damages claims against Exxon, then Cook Inlet and Nautilus argue that they are entitled to share in the punitive damages class award.

All plaintiffs contend that Exxon could not rescind the releases that Cook Inlet and Nautilus gave it in 1989 and 1990 because the Ninth Circuit entered a judgment that Cook Inlet and Nautilus had released their punitive damages claims against Exxon. All plaintiffs insist that this judgment extinguished Cook Inlet and Nautilus' punitive damages claims and thus there was nothing for Exxon to rescind because Cook Inlet's and Nautilus' punitive damages claims against Exxon had merged

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78 2006 Agreement at 10, Exhibit 15, Hawn Declaration, Docket No. 8528.

into the judgment. All plaintiffs cite to Sections 17, 18, and 19 of the Restatement (Second) of Judgments to support their argument.

The "merger doctrine" as expressed in the forgoing sections of the Restatement (Second) of Judgments has no bearing on whether Cook Inlet, Nautilus and Exxon could agree to rescind the 1989 and 1990 releases of Cook Inlet's and Nautilus' punitive damages claims against Exxon. In general, "[t] he doctrine of merger is one aspect of the larger principle of res judicata, and means that when a valid and final personal judgment is rendered in favor of plaintiff, plaintiff cannot maintain a subsequent action on any part of the original claim."[79] As discussed above, there is not a "subsequent action" here; therefore, the merger doctrine has no application here.

Cook Inlet, Nautilus and Exxon were free to modify their 1989 and 1990 settlement agreements. As a general proposition, "[s]ettlement and releases are contractual agreements subject to rescission under the same grounds as any other contract."[80] "A contract can be rescinded by mutual agreement of the parties."[81] That said, while the 2006 agreement between Cook Inlet, Nautilus, and Exxon purports to "reinstate" Cook Inlet's and Nautilus' punitive damages claims against Exxon, that does not necessarily mean that Cook Inlet and Nautilus are

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79 50 C.J.S. Judgments § 704 (1936).

80 15A C.J.S. Compromise § 44 (1936).

81 17 Am. Jur. 2d Contracts § 535 (1962).

entitled to share in the punitive damages class award. The 2006 agreement is not the only "new evidence" that relates to the question of whether Cook Inlet and Nautilus are entitled to share in the punitive damages class award. The 2003 agreement between Cook Inlet, Nautilus, and all plaintiffs is also "new evidence" that bears on that question.

2003 Agreement

In the 2003 agreement, Cook Inlet and Nautilus" [a]greed] that each of them are bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes"[82] and" [a]gree[d] that neither of them have any right to participate in any distribution of or receive any share of any punitive damages awarded to or collected by Plaintiffs[.]"[83] Cook Inlet and Nautilus also agreed to "[w]aive, relinquish, release and discharge any and all rights of any nature whatsoever which they contend they may have to participate in any distribution of or receive any share of any punitive damages awarded to and collected by Plaintiffs .... "[84] The Settlement Agreement further provides:

> The intention of the parties being to fully, completely and forever settle, compromise, release and discharge all claims released herein, each party warrants that it will not, by itself or in

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82 2003 Agreement at 4, § C4, Exhibit 20, Hawn Declaration, Docket No. 8529.

83 Id. at 3-4, §C2.

84 Id. at 4, § C3.

> concert with others, maintain or cause to be maintained any demands, actions, lawsuits, arbitrations, or any other proceedings against the other party in any capacity whatsoever as a result of or pertaining to the claims released and discharged herein. [85]

The terms of the 2003 Settlement Agreement are unambiguous. Cook Inlet and Nautilus agreed that they had no right to share in the punitive damages awarded to the Mandatory Punitive Damages Class and they agreed that they would not assert any demands as to any claims that they had released in the settlement agreement. Included in the claims that they released in the 2003 agreement were their claims that they had the right to share in the punitive damages class award.

Cook Inlet and Nautilus argue that the 2003 agreement does not bar them from participating in the distribution of the punitive damages class award because the 2003 agreement only applies to claims or rights that existed at the time the agreement was signed. Cook Inlet and Nautilus insist that they only agreed to waive any claims or rights that they presently had to share in the punitive damages class award. Cook Inlet and Nautilus contend that in 2003 they had no right to share in the punitive damages class award because they had no punitive damages claims against Exxon, but that when they regained

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85 Id. at 8.

their punitive damages claims against Exxon in 2006, they also regained their rights to share in the punitive damages class award. In short, Cook Inlet and Nautilus contend that the rights to share in the punitive damages class award that they are now asserting are new rights that arose in 2006 and thus could not have been released in the 2003 agreement, which only applied to rights that existed at that time.

The interpretation of the 2003 agreement is governed by Alaska law[86] and in Alaska, settlement agreements are treated as contracts "provided they meet minimal contractual requirements." Crane v. Crane, 986 P.2d 881, 885 (Alaska 1999). Cook Inlet's and Nautilus' primary argument that the 2003 agreement only applies to rights that existed at the time the agreement was entered into and not to future rights is based on the fact that the 2003 agreement uses present tense. There is authority that stands for the proposition that the use of the present tense in a settlement agreement means that the settlement agreement does not apply to future events. See Unova, Inc. v. Acer Inc., 363 F.3d 1278, 1282 (Fed. Cir. 2004) (settlement agreement that read "Unova ... hereby releases Compaq, its parents, and its Subsidiaries" did not encompass future parents of Compaq because of the use of the present tense); Faircloth v. Faircloth, 308 S.E.2d 837, 838 (Ga. 1983)("Where language is cast in the present

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86 Id. at 10, ¶ E2.

tense there is no showing of intent to waive future rights.").

While the 2003 agreement is written in the present tense, the use of the present tense does not override the express provisions of the settlement agreement that indicate that Cook Inlet and Nautilus were not only releasing present claims but future claims as well. The claims at issue here are not Cook Inlet's and Nautilus' punitive damages claims against Exxon; they are Cook Inlet's and Nautilus' claims vis-a-vis all plaintiffs that they have a right to share in the punitive damages class award. As to those claims, Cook Inlet and Nautilus, in the 2003 agreement, agreed to not only release their present claims, but their future claims as well.

Cook Inlet and Nautilus expressly agreed to "[r]elease the Plaintiffs' Committee and all attorney members of same, and all attorneys for the class(es) and Plaintiffs from any potential or actual claims, cause of action, damages or suits.[87] Cook Inlet and Nautilus did not agree to release only their actual claims, but all potential claims as well.

Cook Inlet and Nautilus also expressly agreed to "[w]aive, relinquish, release and discharge any and all rights of any nature whatsoever that they contend they may have to participate in any distribution of or receive any share of any punitive damages awarded to and collected by Plaintiffs" and to "[w]aive, relinquish, release and discharge any right of any nature whatsoever which either of them

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87 Id. at 5, ¶ C7 (emphasis added).

may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to either the Amended Plan of Allocation . . . or the Amended Plan of Distribution of Allocations . . . .[88] "May" can mean "[t]o be a possibility."[89] Thus, Cook Inlet and Nautilus released rights that they "possibly have" to share in the punitive damages class award. "Possible" rights implies future rights or rights not presently existing.

Other provisions of the 2003 agreement support an interpretation that the agreement applies to future rights. In the "Mutual Release" section of the 2003 agreement, Cook Inlet and Nautilus agreed to

> releasee] and fully discharger] Plaintiffs from every claim, demand, liability, action and cause of action whatsoever, of every kind and nature, whether arising out of contract, tort, statute or otherwise, in law or in equity, including any claims for compensatory, special, liquidated and punitive damages, penalties, costs, expenses, and attorney's fees, and other types of loss or losses, whether presently known or unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, arising or alleged to arise out of, or in any way relating to the

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88 Id. at 4, ¶C3 and C5.

89 Black's Law Dictionary 1000 (8th ed. 2004).

> facts which are the subject of the Extant Disputes resolved by this Agreement.[90]

Cook Inlet's and Nautilus' demands to be allowed to share in the punitive damages class award fall within the scope of this release because the subject of the 2003 settlement agreement included Cook Inlet's and Nautilus' rights to share in the punitive damages class award.

The 2003 agreement also expressly states that its purpose is to resolve all "extant disputes" between all plaintiffs and Cook Inlet and Nautilus

> including, as to actual or potential claims between the parties hereto, all positions taken or which could have been taken, contentions made or which could have been made, or arguments advanced or which could have been advanced in the record of all court and related proceedings leading to entry of [Order Nos. 317, 327, 348, 351, and 352] and all actual or potential claims between the parties hereto asserted or which could have been asserted between and/or against any of the parties hereto, by any of the parties hereto, whether or not appearing in the record of the foregoing proceedings and pleadings at

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90 2003 Agreement at 7, Exhibit 20, Hawn Declaration, Docket No. 8529 (emphasis added).

> the United States Supreme Court, Ninth Circuit, and U.S. District Court levels. [91]

The "extant disputes" included the parties' disagreement as to whether or not Cook Inlet and Nautilus should be allowed to share in the punitive damages class award. As to that disagreement, Cook Inlet, Nautilus, and all plaintiffs agreed that they were resolving not only actual claims, but potential claims, which would include future claims.

The court thus rejects Cook Inlet's and Nautilus' argument that the 2003 agreement only applied to claims that existed at that time. The 2003 agreement also applied to future claims. In the 2003 agreement, Cook Inlet and Nautilus released their present and future claims that they had any rights to share in the punitive damages class award.

Cook Inlet and Nautilus also agreed that they would not make any demands or assert any claims against all plaintiffs based on any future settlement of their claims against Exxon. The 2003 agreement provides that "the terms and conditions and provisions and language of said Settlement as set out in the Letter Agreement(s) control, both as to the substantive and procedural aspects and provisions of same[.][92] The Letter Agreement provides that Cook Inlet and Nautilus

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91 Id. at 3.

92 Id. at 1.

> will execute a full release of the Plaintiffs' Committee and its member attorneys and clients and class(es) and/or class member and/or plaintiffs they represent and all parties to its joint prosecution agreement from and/or asto any and all causes of action, claims or demands or liens of any parties, for any damages, monies, attorney fees, or costs, arising from the joint prosecution agreement, the Exxon Valdez grounding and oil spill or related litigation, legal representation, or events including any future settlement or resolution of such claims/causes of action set out in ¶¶ 1, 2, and 3[.] [93]

The claims described in paragraph 1 are Cook Inlet's and Nautilus' claims "against Exxon which relate to the Exxon Valdez grounding and oil spill[.]"[94] Thus, in the Letter Agreement, Cook Inlet and Nautilus agreed that they would not make any demands or assert any claims against all plaintiffs based on any future settlement of their claims against Exxon. Yet, that is exactly what they did in the letters that they sent to all plaintiffs' lead counsel in February and March of 2007; they demanded that they be allowed

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93 Exhibit A at 3-4, 2003 Settlement, Exhibit 20, Hawn, Declaration, Docket No. 8529 (emphasis added).

94 Id. at 2.

to share in the punitive damages class award based on their 2006 agreement with Exxon.

Cook Inlet and Nautilus emphasize that the 2003 agreement provides that all plaintiffs

> [w]aive, relinquish, release and discharge all rights and covenant not to assert any such right(s) to seek, convert, claim, participate in or receive any share of, or assert any claim or lien for costs, interest or attorney's fees as to, any proceeds or recoveries of any nature whatsoever ... by [Cook Inlet and Nautilus], as to claims asserted against the Exxon defendants ... or ... assert or claim any right to participate in, affect, control, compromise, settle, or impact said claims, proceeds, or recoveries of any nature by [Cook Inlet and Nautilus] .... [95]

Cook Inlet and Nautilus insist that by bringing the instant motion all plaintiffs are" impacting" the proceeds of their 2006 settlement with Exxon. Cook Inlet and Nautilus argue that the reinstatement of their punitive damage claims against Exxon was part of the "proceeds" of their 2006 agreement with Exxon and that all plaintiffs agreed that they would not do anything to impact such proceeds. By arguing

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95 2003 Settlement at 5-6, Exhibit 20, Hawn Declaration, Docket No. 8529.

that they are not entitled to share in the punitive damages class award, Cook Inlet and Nautilus contend that all plaintiffs are preventing them from enjoying the fruits of their 2006 settlement agreement with Exxon and all plaintiffs agreed that they would not do this.

By bringing the instant motion, all plaintiffs are not breaching the 2003 agreement with Cook Inlet and Nautilus. As set out above, in the 2003 agreement with all plaintiffs, Cook Inlet and Nautilus agreed to not make any claims against all plaintiffs based on their future settlement with Exxon, and Cook Inlet and Nautilus expressly gave up any rights they had, both in the present and the future, to share in the punitive damages class award. All plaintiffs are entitled to enforce the 2003 settlement agreement, and that is all that they are doing here. They are not interfering with the fruits of Cook Inlet and Nautilus' 2006 settlement with Exxon.

In sum, in the 2003 agreement, Cook Inlet and Nautilus gave up any rights, present and future, that they had to share in the punitive damages class award and they agreed that they would make no further demands that they be included in the distribution plan for seafood processors. Cook Inlet and Nautilus may have had their punitive damages claims against Exxon "reinstated" in 2006, but that does not alter the fact that they gave up their rights to share in the punitive damages class award in 2003.

The conclusion that Cook Inlet and Nautilus gave up their rights, present and future, to share in the punitive damages class award disposes of the other arguments advanced by Cook Inlet and Nautilus. The court addresses only two of those arguments briefly. First, Nautilus and Cook Inlet contend that they have an absolute right to participate in the punitive damages award, pursuant to Rule 23(b)(1)(B), because they are members of the mandatory punitive damages class. Class members are defined as anyone who "possesses" or "have asserted" a punitive damage claim arising from the spill. Because they asserted punitive damages claims and now "possess" punitive damages claims, Nautilus and Cook Inlet argue that they are entitled to participate in the distribution of the class proceeds. They insist that the one impediment to their participation has gone away (the release of their punitive damage claims) and thus they must be allowed to participate in the class award.

Being members of the mandatory punitive damages class does not automatically entitle Cook Inlet and Nautilus to share in the punitive damages class award. After all, Cook Inlet and Nautilus met the definition of a class member for purposes of the mandatory punitive damages class in 1996 when this court first determined that they were not allowed to share in the distribution of the punitive damages award because they had released their punitive damages claims against Exxon. They also met the class definition in 2000 when the court of appeals affirmed this court's decision as to their exclusion.

But most importantly, even though Cook Inlet and Nautilus meet the definition of a class member, they are not entitled to share in the punitive damages class award because they negotiated away that right with all plaintiffs in 2003.

Second, Cook Inlet and Nautilus maintain that they should be allowed to share in the punitive damages class award because the effect of Exxon rescinding the "release" language is to render the 1989 and 1990 agreements substantively the same as the settlement agreements that other seafood processors entered into with Exxon. Nautilus and Cook Inlet contend that the effect of their 2006 settlement with Exxon is that the 1989 and 1990 agreements now only release their compensatory damage claims for 1989 (and a portion of 1990 as to Cook Inlet), putting them on equal footing with Western Alaska, Sea Hawk, and other processors which assigned their punitive damages rights to Exxon.[96] The effect of the rescission may mean the

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96 Cook Inlet also argues that it and Nautilus were treated differently than Seasonal Seafoods, which had released its punitive damages claims against Exxon but has always been allowed to share in the punitive damages class award. The reason Cook Inlet and Nautilus were treated differently than Seasonal Seafoods is that Seasonal Seafoods only released its punitive damages claims against Exxon for 1989. See Exhibit 8 at 25, Hawn Declaration, Docket No. 8527. Cook Inlet and Nautilus released all of their punitive damage claims against Exxon.

Cook Inlet and Nautilus have not released their punitive damage claims against Exxon, just as Western Alaska, the Seattle Seven, and the other processors did not release their punitive damages claims. But, there is still one major difference between Cook Inlet and Nautilus, on the one hand, and the other seafood processors on the other, namely that Cook Inlet and Nautilus negotiated away their rights to share in the punitive damages class award.

Conclusion

All plaintiffs' motion[97] is granted. All plaintiffs are entitled to a declaration that Cook Inlet and Nautilus have waived all rights to share in any punitive damages recovered by the Mandatory Punitive Damages Class.

DATED at Anchorage, Alaska, this 17th day of July, 2007.

/s/ H. Russel Holland
United States District Judge

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97 Docket No. 8504.

FILED

APR 15 1994

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By _____/s/_____, Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In re	)	
	)	No. A89-095-CV (HRH)
the EXXON VALDEZ	)	(Consolidated)
_____	)	

RE: ALL CASES

ORDER NO. 204
ORDER GRANTING CONDITIONAL FINAL APPROVAL AND CERTIFYING MANDATORY PUNITIVE DAMAGES CLASS

The Court now has before it the motion of defendants Exxon Corporation (D-1) and Exxon Shipping Company (D-2), as counterclaimants, for certification of a mandatory punitive damages class

pursuant to Rule 23(b)(1)(B), Federal Rules of Civil Procedure.1 The court previously granted leave to these defendants to file a class action counterclaim, and granted conditional, preliminary approval of a mandatory punitive damages class. Amended Order 180. Promptly following the entry of Amended Order 180, notice was given by mail to all persons who have claims for punitive damages against Exxon and/or Exxon Shipping, and such persons were given an opportunity to file objections to certification of the class. In addition, the court received oppositions to the motion from a number of plaintiffs in this court and in the Superior Court. The court has heard oral argument.

Conditional final approval of a mandatory punitive damages class is now granted, on the terms and conditions set forth below.

Pursuant to the provisions of Rule 23(b)(1)(B), Federal Rules of Civil Procedure, and the other terms of this order, the plaintiffs and/or counterclaim defendants listed in Exhibit A (attached hereto) are conditionally certified as representatives of an approved class. The class consists of all persons or entities who possess or have asserted claims for punitive damages against Exxon and/or Exxon Shipping which arise from or relate in any way to the grounding of the EXXON VALDEZ or the resulting oil spill.

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1 Clerk's Docket No. 4470.

The court appoints as counsel for the class the following:

Kenneth L. Adams
DICKSTEIN, SHAPIRO & MORIN
2101 "L" Street, N.W.
Washington, D.C. 20037

Jerry S. Cohen
COHEN, MILSTEIN, HAUSFELD & TOLL
1401 New York Avenue, N.W., Suite 600
Washington, D.C. 20005

Richard F. Gerry
CASEY, GERRY, CASEY, WESTBROOK, REED & SCHENK
110 Laurel Street
San Diego, Calif. 92101

Mathew D. Jamin
JAMIN, EBELL, BOLGER & GENTRY
323 Carolyn Street
Kodiak, Alaska 99615

Arnold Levin
LEVIN, FISHBEIN, SEDRAN & BERMAN
320 Walnut Street, Suite 600
Philadelphia, Penn. 19106

Lloyd B. Miller
SONOSKY, CHAMBERS, SACHSE, MILLER,

MUNSON & CLOCKSIN
900 West 5th Avenue, Suite 700
Anchorage, Alaska 99501

Laddie Montague
BERGER & MONTAGUE
1622 Locust Street
Philadelphia, Penn. 19103

David W. Oesting
DAVIS WRIGHT TREMAINE
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Anchorage, Alaska 99501

Brian B. O'Neill
FAEGRE & BENSON
2200 Norwest Center
90 South Seventh Street
Minneapolis, Minn. 55402

Lynn Lincoln Sarko
KELLER ROHRBACK
1201 Third Avenue, Suite 3200
Seattle, Wash. 98101

Randall Scarlett
BROWN, MONZIONE, FABRO, ZAKARIA
& SCARLETT
900 Montgomery Street
San Francisco, Calif. 94133

Jeffrey Smyth

ADOLPH & SMYTH
Columbia Seafirst Center
701 First Avenue, 71st Floor
Seattle, Wash. 98104

Melvyn I. Weiss
MILBEG, WEISS, BERSHAD, HYNES & LERACH
One Pennsylvania Plaza
New York, N.Y. 10119

The court's previous orders with respect to the appointment and duties of Liaison Counsel, Co-Lead Counsel, and Lead Trial Counsel shall remain in place and apply to the mandatory punitive damages class.

Pursuant to Rule 23(c)(1), Federal Rules of Civil Procedure, this final approval and certification is conditional for the reason that there is presently pending an appeal by certain of the plaintiffs who believe that they are entitled to a remand of their claims to the Superior Court for the State of Alaska. This court denied such a remand. In the event that the latter decision should be reversed, the court would expect to re-examine the appropriateness of this certification.

Certain of the class representatives listed in Exhibit A (those identified with an asterisk) are among the plaintiffs seeking remand of their claims to the Superior Court. In the event that this court's

decision denying remand is reversed as to such plaintiffs, they shall automatically cease to be class representatives, except upon their filing in this court a waiver of any right to remand to the Superior Court, in which case they shall be entitled to continue as class representatives.2

Pursuant to Rule 2(c)(4)(A), Federal Rules of Civil Procedure, this certification is limited to the issues of:

(1) whether Exxon and/or Exxon Shipping are liable to members of the class, or any of them, for punitive damages, and

(2) if so, what amount of punitive damages should be assessed.

ENTERED: 4/14/94

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2 Following the hearing on April 8, the court asked counsel for defendants and Co-Lead Counsel for plaintiffs to agree upon a list of class representatives. The court is advised that Exhibit A reflects the result of that agreement, and that the condition stated in the text of this order with respect to class representatives who still seek remand is acceptable to those class representatives and to plaintiffs.

/s/

H. RUSSEL HOLLAND

United States District Judge

CLASS REPRESENTATIVES
(EXHIBIT A)

Name	Plaintiff No.
Alaska Sport Fishing Ass'n	139
Alber, Louie E.*	1761
Artuner, Ahmet	1601
Baker, Grant C.	40
Bailey, Jeffrey	828/4447
Bennett, William	1412
Bullock, Michael Wayne	1195
Butler, Robyne L.	41
Carroll, Albert Ray*	1997*
DEBRA LEE, Inc.	39
Dew Drop, Inc.	38
Dooley, Larry L.*	79*
Doumit, Mark	302
Doumit, Steve	303
Jensen, Douglas R.	34
Johnson, Dennis G.	1215
Kompkoff, Donald P., Sr.	114
Kopecky, Josef	1405
Lowell, Daniel	35
Martusheff, Andrean E.	1366
Maxwell, Carol Ann	166
Maxwell, Jacquelan Jill	1194
Maxwell, Robert A. Sr.	165
McLenaghan, Michael*	2946*
McMullen, Elenore E.*	290*
Meredith, Leslie R.*	3928*
Native Village of Tatitlek	116

Ogle, Leonard S.	1375
Olsen, Steven T.	22
Pederson, August M., Jr.	246
Redmond, Mary Lou	1292
Stanton, Joseph David	1231
Tisdall, Jean A.	1387
Wood, Darrell	1316

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Liaison Counsel for Plaintiffs

LODGED
Jan 24 1995

District of Alaska
FILED
Jan 25 1995
United States
District Court

By /s/
Deputy

Honorable H. Russel Holland

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)
the EXXON VALDEZ)
)

THIS ORDER RELATES TO ALL CASES	)No.3:89-95-cv-HRH)(Consolidated)

ORDER ESTABLISHING THE EXXON QUALIFIED SETTLEMENT FUND AND APPOINTING AN ADMINISTRATOR

This matter is before the Court on Plaintiffs' MOTION FOR ORDER ESTABLISHING AN EXXON QUALIFIED SETTLEMENT FUND AND APPOINTING AN ADMINISTRATOR. Acting on such motion,

IT IS HEREBY ORDERED:

1. The Exxon Qualified Settlement Fund ("Exxon QSF") is established and shall comply with the following directives:

FIRST: Funding of Exxon QSF.

(A) Exxon Corporation and Exxon Shipping Company ("Exxon") shall deliver to the Administrator the sum of $20,000,000.00 plus the net interest accrued on the principal balance as set forth in the August 4, 1994 Settlement Agreement between Exxon and the Alaska Native Class, which amount represents the settlement in full of the claims for the commodity value of lost subsistence harvests (the "Native Claims") to the Alaska Native Class, such funds herein referred to as the "Native Settlement Funds."

(B) The Administrator shall hold and invest the Native Settlement Funds, as well as any earnings on the Native Settlement Funds, in the Exxon QSF, and shall administer the Exxon QSF according to and consistent with the requirements of the Internal Revenue Code of 1986 (the "Code) § 468B, and Treasury Regulations § 1.468B-1 through 1.468B-5 (the "Regulations"), and all successor statutes and regulations thereto.

(C) For convenience, this Exxon QSF may be called the "Exxon QSF."

SECOND: Separate Accounts of Exxon QSF. The Administrator shall select Seattle-First National Bank (hereinafter referred to as the "Bank") to hold the Native Settlement Funds and all such Native Settlement Funds shall be segregated from other assets of the Administrator. The Administrator, in the Administrator's sole discretion, may direct the Bank to hold the Native Settlement Funds in one or more accounts for the benefit of the Alaska Native Class.

THIRD: Distribution of Exxon QSF Assets. The Administrator may distribute so much or all of the net income and principal of the assets of the Exxon QSF in the amounts authorized pursuant to orders of this court.

FOURTH: Duties of the Administrator. The Administrator shall be responsible for distributing funds of the Exxon QSF in accordance with the provisions of orders issued by this Court. The Administrator shall be responsible for drafting and submitting orders to the Court requesting approval

of the (i) allocation of the Native Settlement Funds; (ii) the distribution of specific amounts to specified persons or entities; and (iii) the making of tax returns for, and the withholding of tax on, distributions as required under the Internal Revenue Code. The Administrator shall take all steps necessary to cause the Court to decide all issues relating to claims to the assets of the Exxon QSF, including, where necessary, steps required for removal or transference of any actions brought in other courts. The Administrator shall take no action which would in any way conflict with the provisions of Code § 468B and the regulations promulgated thereunder, or any successor statutes and regulations thereto.

FIFTH: Distributions Approved by Court.

(A) The Administrator may periodically petition the Court for entry of an order approving a proposed distribution of funds held in the Exxon QSF. No distribution shall be made pursuant to each such order until all appellate rights with respect to said order have expired or have been exhausted in such a manner as to affirm said order.

SIXTH: Investment and Administration of Accounts. To the extent that the Administrator does not distribute the income or principal of the Exxon QSF for the purposes described above, the Administrator may cause the property of the Exxon QSF to be invested and reinvested. In his discretion, the Administrator may invest the assets of the Exxon QSF in one or several investments. All

expenses of administering the Exxon QSF shall be charged to the Exxon QSF.

SEVENTH: Successor Administrators.

(A) The initial Administrator of the Exxon QSF shall be Lynn Lincoln Sarko ("Sarko") of Seattle, Washington. Sarko shall serve an initial term of two years commencing upon the date of entry of this Court's order establishing the Exxon QSF. Thirty days prior to the expiration of Sarko's stated term, the Co-Lead Counsel shall name a successor Administrator to serve an additional term of two years. Further successor Administrators shall be selected in the same manner. Nothing in the preceding provisions of this Paragraph shall prevent any individual from serving more than one term as Administrator, provided he or she is reappointed according to the procedure described above.

(B) If the Administrator fails or ceases to serve prior to the expiration of his or her term of office as Administrator, the Co-Lead Counsel shall select a new Administrator in accordance with the provisions of paragraph (A) of this section.

(C) Any Administrator may be removed (i) upon thirty (30) days written notice by Co-Lead Counsel or (ii) pursuant to an order of the Court.

(D) No successor Administrator shall be liable for any act or omission of a predecessor or obligated to inquire into the validity or propriety of any such act or omission. Any such successor Administrator shall be entitled to accept as conclusive any accounting and statement of assets furnished to such successor by a predecessor or by

the personal representative of such predecessor and shall further be entitled to receipt only for those assets included in such statement. Notwithstanding the foregoing, if a successor Administrator determines that a predecessor committed an act or omission which harmed the Exxon QSF, such successor Administrator, in conjunction with the Co-Lead Counsel, shall take appropriate action to remedy the harm.

(E) The Administrator shall be entitled to receive compensation for his or her services as Administrator. The Administrator shall be entitled to be reimbursed for his or her reasonable out-of-pocket costs, including meal and lodging expenses where travel is necessary, copying costs, long distance telephone charges, mailing expenses and the like, including the cost of sending notices to recipients.

(F) The Administrator shall be entitled to hire persons to provide legal, accounting and other professional services to the Exxon QSF.

EIGHT: Governing Law.

All questions relating to the validity, construction, operation, and administration of the Exxon QSF shall be governed by the law of the State of Alaska, unless such law is contrary to the provisions of the Code or Regulations shall control.

NINTH: Definitions.

As used herein, unless some other meaning or intent is apparent from the context:

(A) The plural shall include the singular and vice versa, and masculine, feminine and neuter words shall be used interchangeably.

(B) The term "Co-Lead Counsel" means David W. Oesting and Jerry S. Cohn, Plaintiffs' Co-Lead Counsel, acting on behalf of all Plaintiffs as provided in Paragraph A.(c) of Superior Court Pretrial Order No. 6 and paragraph (3) of District Court Pretrial Order No. 9 in the EVOS Litigation.

(C) The term "Court" means the United States District Court for the District of Alaska.

(D) The term "EVOS Litigation" means and includes all lawsuits in any Alaska State court or in this Court, including any action removed from any Alaska state court to the Court, that seeks civil relief, including damages and/or injunctive relief, on account of the Oil Spill.

(E) The term "Native Settlement Class" means and includes all persons entitled to receive any portion of payments made by Exxon pursuant to the August 4, 1994, Settlement Agreement Between Exxon and Alaska Native Class.

2. Lynn Lincoln Sarko is designated and approved as administrator of the Exxon QSF.

3. Lynn Lincoln Sarko is directed to comply with, and perform all duties required under, Code § 468B and the regulations promulgated thereunder, including, but not limited to, applying for an employer identification number from the Internal Revenue Service ("IRS")

4. Upon delivery of payment into the Exxon QSF, Exxon is discharged of any obligations

to any creditor or assignee of any member of the Alaska Native Settlement Class, or to any lienor against the entitlement of any member of the Alaska Native Settlement Class to any proceeds of the Native Settlement Funds. Such obligations, if any, shall be discharged by the Exxon QSF.

5. Lynn Lincoln Sarko is directed to provide the IRS, the State of Alaska, Department of Health & Social Services, Child Support Enforcement Division and the State of Washington, Department of Social and Health Services, Division of Child Support and all successor entities thereto with a list of names and taxpayer identification numbers for all persons who are expected to received payments from the Exxon QSF, regardless of whether such payments are made directly to such person or to their attorneys for the benefit of such persons.

6. This court shall maintain continuing jurisdiction over the Exxon QSF. All claims filed against the Exxon QSF or its assets, including all actions which attempt to attach the assets of the Exxon QSF on behalf of any creditor of any recipient, shall be heard only by this Court, based on this Court's ancillary jurisdiction over such actions and the jurisdictional requirements of Treas. Reg. 1.468B-1 (c) (1).

DATED this ___25__ day of _Jan__, 1995.

_____

THE HONORABLE H. RUSSEL HOLLAND

UNITED STATES DISTRICT COURT JUDGE

CC: **David Rushkin**
Lloyd Benton Miller [Initials]
Douglas Serdahely

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC., dba Cook Inlet Processing,
Plaintiff - Appellant,

RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES,
Plaintiffs Appellees,

And

NAUTILUS MARINE, INC.,

Plaintiff,

v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

FILED
SEP 23 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 07-35794
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

ORDER

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC., dba Cook Inlet Processing,

Plaintiff,

And

NAUTILUS MARINE, INC.,
Plaintiff - Appellant,
RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES,
Plaintiffs - Appellees,

v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

No. 07-35796
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

Before: SCHROEDER, KLEINFELD, and THOMAS, Circuit Judges.

The panel has voted to deny Plaintiffs-Appellants' consolidated petition for panel rehearing and petition for rehearing en banc and has further voted to deny Plaintiffs-Appellants' motion to supplement the record as to the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC., dba Cook Inlet Processing, Plaintiff - Appellant,

RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES, Plaintiffs Appellees,

And

NAUTILUS MARINE, INC.,

Plaintiff,

v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

FILED
SEP 30 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 07-35794
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

ORDER

In re: EXXON VALDEZ, ---------- POLAR EQUIPMENT INC., dba Cook Inlet Processing, Plaintiff, And NAUTILUS MARINE, INC., Plaintiff - Appellant, RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES, Plaintiffs - Appellees, v. EXXON MOBIL CORP; EXXON SHIPPING CO., Defendants - Appellees.	No. 07-35796 D.C. No. CV-89-00095-HRH District of Alaska, Anchorage

Before: SCHROEDER, KLEINFELD and THOMAS, Circuit Judges.

Appellant Polar Equipment, Inc., d.b.a. Cook Inlet Processing, Inc.'s motion for stay of the issuance of the mandate pending application for writ of certiorari is granted. Fed. R. App. P. 41(b).

Therefore, it is ordered that the mandate is stayed pending the filing of the petition for writ of certiorari in the Supreme Court. The stay shall continue until final disposition by the Supreme Court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC., dba Cook Inlet Processing,
Plaintiff - Appellant,

RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES,
Plaintiffs Appellees,
And

NAUTILUS MARINE, INC.,

Plaintiff,
v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

FILED
OCT 29 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 07-35794
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

ORDER

In re: EXXON VALDEZ, ---------- POLAR EQUIPMENT INC., dba Cook Inlet Processing, Plaintiff, And NAUTILUS MARINE, INC., Plaintiff - Appellant, RICHARD - NEWBY; MIKE LOPEZ; THEODORE JEWELL; LARRY POWERS; EAGLE FISHERIES, L.P.A.; ESTATE OF SEWARD SHEA AND STEVE COPELAND; SEA HAWK SEAFOODS, INC.; PLAINTIFFS' LIAISON COUNSEL, CO-LEAD COUNSEL OR LEAD TRIAL COUNSEL; OTHER PLAINTIFFS IN CONSOLIDATED CASES, Plaintiffs - Appellees, v. EXXON MOBIL CORP; EXXON SHIPPING CO., Defendants - Appellees.	No. 07-35796 D.C. No. CV-89-00095-HRH District of Alaska, Anchorage

Before: SCHROEDER, KLEINFELD and THOMAS, Circuit Judges.

Appellee's motion to reconsider staying issuance of mandate is granted. Appellant's motion for stay of mandate is denied. The mandate shall issue forthwith. All pending motions are denied as moot.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: EXXON VALDEZ,

POLAR EQUIPMENT INC.,
dba Cook Inlet Processing,
Plaintiff - Appellant,

RICHARD - NEWBY; et al.
Plaintiffs Appellees,

and

NAUTILUS MARINE, INC.,

Plaintiff,

v.

EXXON MOBIL CORP; EXXON SHIPPING CO.,

Defendants - Appellees.

FILED
NOV 3 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 07-35794
D.C. No. CV-89-00095-HRH
District of Alaska, Anchorage

MANDATE

In re: EXXON VALDEZ, ---------- POLAR EQUIPMENT INC., dba Cook Inlet Processing, Plaintiff, and NAUTILUS MARINE, INC., Plaintiff - Appellant, RICHARD - NEWBY; et al. Plaintiffs - Appellees, v. EXXON MOBIL CORP; EXXON SHIPPING CO., Defendants - Appellees.	No. 07-35796 D.C. No. CV-89-00095-HRH District of Alaska, Anchorage

The judgment of this Court, entered July 24, 2009, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. Cost awarded to

APPELLEE, Other Plaintiffs in Consolidated Cases in #07-35796, in the amount of $196.00

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Lee-Ann Collins
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re the EXXON VALDEZ

This Document Relates to:
ALL CASES

Case Number: A89-0095—CV (HRH)
JUDGMENT IN A CIVIL CASE

___ JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

THAT Nautilus Marine, Inc. and Cook Inlet Processing Inc. shall not share in the punitive damages ultimately awarded to the class of All Plaintiffs.

APPROVED:

/s/

H. Russel Holland
U.S. District Court Judge

Date: August 22, 2007
Note: Award of prejudgment interest, costs and attorney's fees are governed by D.Ak. L.R. 54.1, 54.3, and 58.1.

Ida Romack
Ida Romack, Clerk of Court

Alaska "Toxic Tort" Statute

Title 46. Water, Air, Energy, and Environmental Conservation
Chapter 03. Environmental Conservation
Article 9. Prohibited Acts, Penalties, and Damages
§ 46.03.822. Strict liability for the release of hazardous substances

(a) Notwithstanding any other provision or rule of law and subject only to the defenses set out in (b) of this section, the exception set out in (i) of this section, the exception set out in AS 09.65.240, and the limitation on liability provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or

threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who at the time of disposal of any hazardous substance owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the

incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under AS 46.03.823(c) and 46.03.825(d), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

(3) the person is a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) that acquired the facility under those sections;

(4) the person acquired the facility by inheritance or bequest; or

(5) the person is a state governmental entity and the state acquired the facility under Public Law 85-508 (Alaska Statehood Act).

(d) To establish that a person had no reason to know that the hazardous substance was disposed of on, in, or at the facility, as provided in (c)(1) and (l) of this section, the person must have undertaken, at the time of voluntary acquisition, all reasonable inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this subsection a court shall take into account all relevant facts, including

(1) any specialized knowledge or experience the person has;

(2) the relationship of the purchase price to the value of the property if it were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obviousness of the presence or likely presence of contamination at the property; and

(5) the ability to detect contamination by appropriate inspection.

(e) This section does not diminish the liability of a person who previously owned or operated a facility or vessel and who would otherwise be liable. If the person obtained actual knowledge of the release or threatened release of a hazardous substance at the facility or vessel and subsequently transferred ownership to another without disclosing that knowledge, the person is liable under (a)(2) of this section, and a defense under (b)(1)(B) of this section is not available to the person.

(f) This section does not diminish the liability of a person who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action relating to the facility or vessel.

(g) An indemnification, hold harmless, or similar agreement, or conveyance of any nature is not effective to transfer liability under this section from the owner or operator of a facility or vessel or from a person who might be liable for a release or substantial threat of a release under this section. This subsection does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this section. This

subsection does not bar a cause of action that an owner, operator, or other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against another person.

(h) The state, a municipality, a village, a person who acts as a volunteer and is engaged in a response action under the direction of the federal or state on-scene coordinator, and a vessel of opportunity engaged in a response action under the direction of the federal or state on-scene coordinator are not liable under this section for costs or damages as a result of actions taken in response to an emergency created by a release or threatened release of a hazardous substance generated by or from a facility or vessel owned by another person unless the actions taken by the state, the municipality, the village, the volunteer, or the vessel constitute gross negligence or intentional misconduct.

(i) In an action to recover damages and costs, a person otherwise jointly and severally liable under this section is relieved of joint liability and is liable severally for damages and costs attributable to that person if the person proves that

(1) the harm caused by the release or threatened release is divisible; and

(2) there is a reasonable basis for apportionment of costs and damages to that person.

(j) A person may seek contribution from any other person who is liable under (a) of this section during or after a civil action under (a) of this section or after the issuance of a potential liability determination by the department. Actions under this subsection shall be brought under the Alaska Rules of Civil Procedure and are governed by state law. In resolving claims for contribution under this section, the court may allocate damages and costs among liable parties using equitable factors determined to be appropriate by the court. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action under (a) of this section.

(k) A unit of state or local government that acquired ownership or control of a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax delinquency proceeding, abandonment, escheat, the exercise of eminent domain authority by purchase or condemnation, or circumstances in which the governmental unit involuntarily acquired title by virtue of its function as a sovereign is not liable as an owner or operator under this section unless the governmental unit has caused or contributed to the release or threatened release of a hazardous substance at or from the facility or vessel, in which case, the governmental unit is subject to liability under this section in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. A

hazardous substance release shall be determined to have occurred as provided in this section. For purposes of this subsection, "caused or contributed to the release or threatened release of a hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility or vessel of a hazardous substance in the air, land, or water that had first been released to the environment by a person other than the governmental unit that acquired the facility or vessel;

(2) does not include the exercise or failure to exercise regulatory or enforcement authority;

(3) after the ownership or control of the facility or vessel has been acquired by the governmental unit, includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(l) For purposes of determining liability in an action to recover damages or costs under this section, a person who acquires a facility and who, upon

discovering a release or threatened release on, in, or at the facility that occurred before acquisition of the facility, who had no reason to know that a hazardous substance was disposed of on, in, or at the facility, and who, upon discovering the release or threatened release, acted in accordance with (b)(2) of this section to begin operations to contain and clean up the hazardous substance, may not be held liable under this section unless the person has caused or contributed to the release or threatened release of the hazardous substance, in which case, the person is subject to liability under this section in the same manner as any other person. For purposes of this subsection, "caused or contributed to the release or threatened release of the hazardous substance"

(1) does not include the failure to prevent the passive leaching or migration at or from a facility of a hazardous substance in the air, land, or water that had first been released into the environment by a person other than the person that acquired the facility;

(2) after the ownership or control of the facility has been acquired by the person includes

(A) the spilling, leaking, pumping, pouring, emptying, injecting, escaping, or dumping of a hazardous substance from barrels, tanks, containers, or other closed receptacles; or

(B) the abandonment or discarding of barrels, tanks, containers, or other closed receptacles containing a hazardous substance.

(m) In this section,

(1) "damages" has the meaning given in AS 46.03.824 and includes damage to persons or to public or private property, damage to the natural resources of the state or a municipality, and damage caused by acts or omissions of a response action contractor for which the response action contractor is not liable under AS 46.03.823 or 46.03.825;

(2) "potential liability determination" means an administrative determination issued by the department notifying a person of the person's potential liability under (a) of this section as the result of the release or threatened release of hazardous substances and includes a

(A) letter notifying the person that the person is a potentially responsible party;

(B) notice to a person of state interest in a release or threatened release of a hazardous substance;

(C) request to the person for site characterization or cleanup;

(D) notice of violation; and

(E) similar notification by the department of a person's potential liability under this section.

AS § 46.03.822

Alaska "Toxic Tort" Damages Statute

Title 46. Water, Air, Energy, and Environmental Conservation

Chapter 03. Environmental Conservation

Article 9. Prohibited Acts, Penalties, and Damages

§ 46.03.824. Damages

Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit.

26 U.S.C.A. § 468B

§ 468B. Special rules for designated settlement funds

(a) In general.--For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund.--

(1) In general.--There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed.--For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)--

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) **Transfers to the fund.**--In the case of any qualified payment made to the fund--

(A) the amount of such payment shall not be treated as income of the designated settlement fund,

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) **Tax in lieu of other taxation.**--The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) **Coordination with subtitle F.**--For purposes of subtitle F--

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) **Deductions not allowed for transfer of insurance amounts.**--No deduction shall be allowable for any

qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) Definitions.--For purposes of this section--

(1) Qualified payment.--The term "qualified payment" means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than--

(A) any amount which may be transferred from the fund to the taxpayer (or any related person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) Designated settlement fund.--The term "designated settlement fund" means any fund--

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) Related person.--The term "related person" means a person related to the taxpayer within the meaning of section 267(b).

(e) Nonapplicability of section.--This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers' compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) Other funds.--Except as provided in regulations, any payment in respect of a liability described in

subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) Clarification of taxation of certain funds.--

(1) In general.--Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

(2) Exemption from tax for certain settlement funds.--An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if--

(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term "government entity" means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.

[(3) Repealed. Pub.L. 109-432, Div. A, Title IV, § 409(a), Dec. 20, 2006, 120 Stat. 2963]

FEDERAL RULES OF CIVIL PROCEDURE
Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) *Certification Order.*

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all

members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not

requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the

applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Federal Rules of Civil Procedure Rule 23

RECITALS TO PARTIAL RELEASE

WHEREAS, Nautilus Marine Enterprises, Inc. (doing business as Nautilus Marine, Inc., hereinafter called "Nautilus") is a subtenant of Waterkist Corporation on certain real property located in Valdez, Alaska and is the only person or entity with a possessory interest in that certain subleased real property and in the business conducted on said subleased real property and is duly authorized to execute the following Partial Release, and,

WHEREAS, Waterkist Corporation, hereinafter called "Waterkist", the lessor to Nautilus, is a reorganized Chapter 11 debtor pursuant to a plan of reorganization confirmed by order of the bankruptcy court of the Western District of Washington entered on April 25, 1986 under cause no. 84-000610-W11. Waterkist is duly authorized to execute the following Partial Release. The claims that are the subject of this Partial Release arose in 1989 (after confirmation of the referenced plan of reorganization). Under the terms of the plan of reorganization, Waterkist is authorized to enter into this Partial Release without order of the bankruptcy court or other approval.

WHEREAS, Waterkist benefits from the consideration to be paid as referenced in the following Partial Release to the extent said consideration is received by Nautilus, and not by

Waterkist because such consideration received by Nautilus enhances the financial strength of Nautilus and its ability to honor its obligations to Waterkist including its obligations under the referenced sublease between Nautilus and Waterkist.

In reliance upon the forgoing facts represented by the signators hereto to be true, Exxon Shipping Company, Exxon Corporation and the M/V EXXON VALDEZ accepts the following Partial Release:

PARTIAL RELEASE

FOR AND IN CONSIDERATION of the sum of ONE MILLION, TWO HUNDRED TWELVE THOUSAND, FIVE HUNDRED U.S. DOLLARS ($1,212,500.00) paid to NAUTILUS, WATERKIST, M. Thomas Waterer and Dawn Waterer, and further acknowledging the full amount of this payment, and all previous payments, which cumulatively amount to TWO MILLION, TWO HUNDRED FORTY-FIVE THOUSAND, SEVEN HUNDRED SEVENTY-NINE U.S. DOLLARS ($2,245,779.00), and further in consideration of the lost wage claim indemnification letter from Exxon dated November 17, 1989, a copy of which is attached to this Partial Release, receipt of all of which are hereby acknowledged, and intending to be legally bound hereby, the undersigned ABSOLUTELY AND IRREVOCABLY RELEASE AND DISCHARGE, Exxon Shipping Company, Exxon Corporation, their directors, officers, employees and agents, and the M/V EXXON VALDEZ, its officers and crew, from any and all claims, demands and causes of action of every kind and character, whether known or unknown, for damages that may have been or may be sustained by the undersigned with respect to any and all losses, injuries, damages, or claims for losses, injuries, or damages arising during the calendar year 1989 (or during 1990 relating and growing out of the undersigned parties' 1989 fishing season business activities or operations) which are in anyway associated with or arise from the incident involving

the M/V EXXON VALDEZ on March 24, 1989, or out of any and all oil-containment or clean-up procedures that followed, including any causes of action based on representations made during the course of any response procedures. Further, the undersigned expressly release any and all claims for punitive damages in any way associated with the incident involving the M/V EXXON VALDEZ on March 24, 1989, including any oil-containment or clean-up procedures that followed. The undersigned expressly except and reserve all claims, demands and causes of action of every kind and character, other than those released herein.

Without limiting the generality of the preceding sentence, M. Thomas Waterer's release herein does not apply to a claim for lost income, if any, arising out of the incident involving the M/V EXXON VALDEZ on March 24, 1989, and the oil-containment and clean-up procedures that followed, that may be made by Sunburst Limited Partnership for the tender vessel, "Triton".

The sum stated above is accepted by the undersigned in full settlement of the claims described above. The undersigned understand that this sum was agreed upon as a compromise settlement and is not an admission of liability by any party. In further consideration of the payment stated above, the undersigned hereby assign, sell, transfer and subrogate to Exxon Shipping Company, without limitation, any and all rights, claims,

interest and causes of action known or unknown, for Exxon Shipping Company's own use and benefit, that the undersigned have or may have in respect to the claims described above against any person, corporation or governmental agency, including any liability fund that may be available for the payment of damage claims; by so doing, the undersigned give Exxon Shipping Company full power and authority, for Exxon Shipping Company's own use and benefit, and on such terms and conditions as Exxon Shipping Company may deem reasonable in the exercise of its sole discretion, to litigate, compromise, settle or otherwise dispose of, in the names of the undersigned or otherwise, any claims described above, including the power and authority to release and discharge, in the name of the undersigned or otherwise, any persons, corporations or governmental agencies.

The undersigned also agree that other than the attached lost wage indemnification letter, there is no agreement or other understanding between any of the undersigned and Exxon except for this Partial Release, and that the Funds Receipt and Claims Credit dated August 30, 1989, the Funds Receipt and Claims Credit notarized October 30, 1989, and the Partial Release dated May 26, 1989, and July 3, 1989 are superseded by this Partial Release.

The undersigned agree to keep the existence and terms of the settlement embodied in this Partial Release strictly confidential and agree not to disclose

the same to any person unless required to do so by lawful order.

Executed this 18th day of November, 1989.

NAUTILUS MARINE
ENTERPRISES, INC.

Witness : Karen Lee Teal /s/
Signature

(seal)

M. Thomas Waterer
Printed Name

President
Title

WATERKIST
CORPORATION

Witness: Karen Lee Teal /s/
Signature

(seal)

M. Thomas Waterer
Printed Name

President
Title

Witness: Karen Lee Teal /s/

Signature, M. Thomas Waterer

Witness: Karen Lee Teal

/s/
Signature, Dawn Waterer

I am counsel for all of the above signatory parties, and I have fully explained to each company's management and to the individuals involved the legal consequences of this Partial Release, which releases all specific claims.

/S/
Edward P. Weigelt, Jr.

COOK INLET PROCESSING
a Division of Polar Equipment, Inc.
Partial Release

1. FOR AND IN CONSIDERATION of the sum of TWO MILLION, EIGHT HUNDRED FIFTY THOUSAND AND 00/100 ($2,850,000.00) paid to the undersigned, Cook Inlet Processing, a division of Polar Equipment, Inc., ("Cook Inlet Processing'), a corporation organized pursuant to the laws of the State of Alaska, receipt of which is hereby acknowledged, and further acknowledging previous payments totaling $750,000.00, and in further consideration of the confidentiality, costs and fees letter of even date herewith, and attached hereto, for a cumulative payment amount of $3,600,000.00, and intending to be legally bound hereby, Cook Inlet Processing ABSOLUTELY AND IRREVOCABLY RELEASES AND DISCHARGES Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, their directors, officers, employees and agents, and the M/V EXXON VALDEZ, its officers and crew (hereinafter collectively referred to as "Exxon"), from all claims, demands and causes of action of every kind and character (whether known or unknown, or yet to occur), for all damages, costs, expenses, fees and all other injuries incurred during the calendar year 1989 and during 1990 up to the date of execution of this Partial Release (or which are incurred thereafter but relate to Cook Inlet Processing's operations and business activities during the

calendar year 1989 and during 1990 up to the date of execution of this Partial Release),and all punitive damages of any kind arising at any time, that (a) are associated with or arise from the incident involving the M/V EXXON VALDEZ on March 23-24, 1989, (b) arise out of any and all oil-containment or cleanup procedures that preceded or followed the incident involving the M/V EXXON VALDEZ, or (c) are based on representations made at any time prior to or during the course of any oil spill response procedures. The sum stated above is accepted by Cook Inlet Processing in full settlement of the claims described above. The undersigned understands that this sum was agreed upon in a compromise settlement and is not an admission of liability by any party.

2. In further consideration of the payment stated above, Cook Inlet Processing hereby assigns, sells, transfers and subrogates to Exxon Corporation, without limitation, any and all rights, claims, interests and causes of action, known or unknown, for Exxon Corporation's own use and benefit, that Cook Inlet Processing has or may have, in respect to the claims described in paragraph 1 above, including punitive damage claims, against any person or corporation other than Exxon, or any governmental agency, including any liability fund that may be available for payment of damage claims. By so doing, Cook Inlet Processing gives Exxon Corporation full power and authority, for Exxon Corporation's own use and benefit, and on such

terms and conditions as Exxon Corporation may deem reasonable in the exercise of its sole discretion, to litigation, compromise, settle or otherwise dispose of, in the name of Cook Inlet Processing or otherwise, the claims assigned herein, including the power and authority to release and discharge in the name of Cook Inlet Processing or otherwise, any persons, corporations or governmental agencies.

3. In further consideration of the payment stated above, in the event the assignment of any or all of the rights, claims, interests and causes of action by Cook Inlet Processing to Exxon Corporation in paragraph 2 above shall be found for any reason to be invalid, ineffective, or unenforceable, then and only then, and only to the extent that the assignment is found to be invalid, ineffective or unenforceable, Cook Inlet Processing in the alternative hereby covenants and agrees not to execute or to seek to enforce any judgment against any party for any such right, claim, interest, or cause of action which was sought to be assigned by Cook Inlet Processing to Exxon in paragraph 2 above.

4. In further consideration of the payment stated above, Cook Inlet Processing agrees that this Partial Release hereby supersedes the Funds Receipt and Claims Credit forms executed on August 29, 1989, October 16, 1989, and March 9, 1990.

Executed this 22nd day of May, 1990.

COOK INLET PROCESSING, INC.
A division of Polar Equipment,Inc.

/s/ _____ _____ /s/
Witness Signature

Howard M. Baker
Printed Name

President, Polar Equipment, Inc.

/s/ _____ _____ /s/
Witness Signature

Mike Shupe
Printed Name

Secretary, Polar Equipment, Inc.

_____
Corporate Seal

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

COOK INLET PROCESSING, a division of Polar Equipment, Inc., an Alaska corporation,	)
Plaintiff,	)
vs.	)
EXXON CORPORATION, EXXON COMPANY USA, and EXXON SHIPPING COMPANY,	)
Defendants.	)

Case No. 3AN-91-2445 Civil

COMPLAINT

COMES NOW the plaintiff, Cook Inlet Processing, a division of Polar Equipment, Inc. ("CIP"), by and through its attorneys of record, Birch, Horton, Bittner and Cherot, and for its Complaint hereby states and alleges as follows:

1. Plaintiff CIP is a division of Polar Equipment, Inc., an Alaska corporation. CIP maintains offices in Nikiska, Kodiak and Anchorage, Alaska. Polar

Equipment, Inc. has paid its biennial corporation tax last due and filed its biennial report for the last reporting period and is fully entitled to maintain this action.

2. Exxon Shipping Company and/or Exxon Company USA and/or Exxon Corporation is the owner of the M/V Exxon Valdez which spilled millions of gallons of crude oil into Prince William Sound, Alaska on March 24, 1989 and thereafter ("Exxon oil spill"). Exxon Company USA and/or Exxon Corporation was the owner of the oil aboard the Exxon Valdez. Defendants Exxon Shipping Company, Exxon Company USA, and Exxon Corporation are liable to plaintiff for damages resulting from the Exxon oil spill under the laws of the state of Alaska and other applicable law.

3. Plaintiff suffered damages as a result of the Exxon oil spill. After negotiations with defendants, in May, 1990, defendants paid plaintiff valuable consideration and plaintiff executed a partial release in favor of defendants and others for all damages suffered by plaintiff through approximately May, 1990. By agreement of plaintiff and defendants, however, plaintiff did not release defendants for any damages suffered by plaintiff after May, 1990.

4. At some future time, the return of salmon or other fish to the Upper Cook Inlet, Kodiak, or Prince William Sound fisheries in the state of Alaska may be adversely affected as a direct or proximate result

of the Exxon oil spill, which would cause plaintiff damage. Or plaintiff may suffer some damages at a future date as a result of the Exxon oil spill. Plaintiff is entitled to a declaratory judgment that should such damage occur in the future, plaintiff may bring an action against the defendant to recover for such damages to be incurred in the future. In the alternative, plaintiff is entitled to damages from defendants in an amount in excess of $50,000 to compensate plaintiff for damages to be incurred in the future as a result of the Exxon oil spill.

Wherefore, plaintiff prays for the following relief:

1. That this court enter a declaratory judgment to the effect that should plaintiff incur some damage in the future from the Exxon Valdez oil spill, plaintiff is not barred by the statute of limitations from bringing such action against defendants at such dates in the future as the court may determine;

2. In the alternative, that judgment be entered in favor of plaintiff against defendants, jointly and severally, in an amount in excess of $50,000 to compensate plaintiff for the future damages to be sustained by plaintiff;

3. That the court award plaintiff prejudgment interest, costs, and Rule 82 attorney fees;

4. That the court award such further relief as it deems just and equitable.

DATED this 26th day of March, 1991, at Anchorage, Alaska.

BIRCH, HORTON, BITTNER
and CHEROT
Attorneys for Plaintiff

By: /S/
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BOGLE & GATES

Attorneys for Plaintiffs

THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT OF ANCHORAGE

NAUTILUS MARINE ENTERPRISES, INC., a [sic] Alaska corporation, and M. THOMAS WATERER,
Plaintiffs,

vs.

EXXON CORPORATION, a New Jersey Corporation, EXXON SHIPPING COMPANY, a Delaware Corporation;

Complaint

JOSEPH J. HAZELWOOD, EDWARD)
MURPHY,)
Defendants.)

Plaintiffs, and each of them, for their Complaint against the defendants, and each of them, state:

1. Plaintiffs hereby do not adopt any portion of the Consolidated Plaintiffs' Preliminary Designation of Issues for the April 1993 Trial, filed February 3, 1992, in the consolidated litigation case no. 3AN-89-2533 Civil.

2. This Complaint arises out of the March 24, 1989 grounding of the *Exxon Valdez* and the resulting oil spill. Plaintiffs' claims are based on various Alaska statutes and Alaska common law. Plaintiffs do not assert any federal causes of action.

3. Subject matter is proper under A.S. 22.10.020(a).

4. This Court has personal jurisdiction by virtue of the fact that all defendants either transact business in the state of Alaska or have sufficient contacts with the state of Alaska.

5. Venue is proper in the Third Judicial District at Anchorage pursuant to Alaska Civil Rule of Procedure 3(c) because the claims arose in the Third Judicial District.

PARTIES

6. Nautilus Marine Enterprises, Inc., is a [sic] Alaska corporation, doing business in the State of Alaska and operates as a seafood processor located in Valdez, Alaska. Nautilus Marine Enterprises, Inc. has a processing presence in Prince William Sound. Nautilus Marine Enterprises, Inc. primarily purchases all species of salmon, in addition to halibut, herring and cod directly from Alaskan fishermen in the waters of Prince William Sound, inclusive of tender purchases, as well as dock deliveries. Product is sold eviscerated, graded and packed fresh, frozen, and salt-cured, in wholesale cartons ready for distribution either domestically or exported. Salmon roe caviar is also processed at the Valdez plant for export.

7. M. Thomas Waterer is a resident and citizen of the [sic] Washington State and conducts business in the State of Alaska as president and principle [sic] stockholder of Nautilus Marine Enterprises, Inc., a seafood processor facility.

DEFENDANTS

8. Defendant Exxon Corporation is a New Jersey corporation, with its principal place of business at 225 East John Carpenter Freeway, Irving, Texas. Exxon Corporation, which is engaged in the business of operation [sic] petroleum companies through its subsidiaries and divisions, including those in the

State of Alaska, was at all relevant times herein an owner and operator of the vessel known as the *Exxon Valdez*, which operated out of Alaska waters on a continuous and systematic basis, and was at all relevant times herein the owner of the crude oil being transported on the vessel known as the *Exxon Valdez*.

9. Defendant Exxon Shipping Company is a Delaware corporation, and subsidiary of defendant Exxon Corporation, with its principal place of business at 800 Bell Street, Houston Texas, and was at all relevant times herein an owner and operator of the vessel known as the *Exxon Valdez*, which operated in Alaskan waters.

10. At all time relevant hereto, defendant Exxon Shipping Company was an agent and/or representative and/or alter ego of defendant Exxon Corporation. The term "Exxon" shall refer in this document to defendants Exxon Corporation and Exxon Shipping Company, collectively.

11. Defendant Edward Murphy is a resident of Homer, Alaska, and at all relevant times herein was employed as a harbor pilot for the harbor of Valdez, Alaska.

12. Defendant Joseph J. Hazelwood is a resident of the State of New York, and was employed by Exxon in the State of Alaska as Captain of the vessel *Exxon Valdez*.

GENERAL ALLEGATIONS

13. On Thursday evening, March 23, 1989, one of Exxon's largest vessels, the tanker *Exxon Valdez*, a 987 foot ship, weighting 211,000 deadweight tons with cargo and bunker fuel, left the port of Valdez, Alaska, bound for Long Beach, California.

14. The vessel's twelve oil tanks were filled with approximately 53 million gallons of Alaskan crude oil which had been shipped from Alaska's north slope. The crude oil was owned by Exxon.

15. The vessel carried a crew of nineteen persons plus the captain, defendant Joseph J. Hazelwood. There were only three mates on board.

16. Prior to departure on Thursday, March 23, 1989, Captain Hazelwood, while ashore at Valdez, Alaska, consumed a number of alcoholic beverages.

17. Prior to departure, Third Mate Gregory Cousins was on duty until nearly midnight the previous night of March 22, and was awake and generally at work for much of the day of March 23rd. The Second Mate Lloyd McCain worked long hours in loading operations during the day of March 23rd. Exxon's emphasis on rapid turnaround led to fatigue of the crew of the *Exxon Valdez*.

18. Prior to departure, when Captain Hazelwood and several members of the crew arrived at the Alaska terminal gate at around 8:25 p.m., they found that the posted sailing time of the vessel had been moved up to 9:00 p.m. without their knowledge.

19. Shortly after 9:00 p.m., the *Exxon Valdez* passed through the harbor and Valdez Narrows under the command of Harbor Pilot Edward Murphy. Captain Hazelwood left the bridge during part of the transit through the narrows, leaving only one officer, Murphy, on the bridge.

20. While on board, Murphy noticed the smell of alcohol on Hazelwood's breath.

21. After piloting the ship out of the harbor, Murphy turned over command to Captain Hazelwood, who came up to the bridge but was obviously impaired and not fit for duty. Murphy disembarked at the southern end of the Narrows, leaving the vessel in the command of Captain Hazelwood, who had obviously been drinking.

22. Hazelwood was the only officer on the bridge for a period during Murphy's departure.

23. Hazelwood operated the vessel in violation of Exxon's company policy regarding the use of alcohol.

24. Hazelwood deviated from the accepted traffic pattern due to reports that icebergs which had

calved from the Columbia glacier were floating in the outbound lane.

25. Hazelwood could simply have slowed down to avoid icebergs, but such action would have meant a brief delay in the transport of oil, a delay which Hazelwood knew was unacceptable to Exxon.

26. Hazelwood gave the order to increase the ship's speed and turn it on a due south course which led across the separation zone, into and beyond the incoming traffic lane. Hazelwood placed the ship on autopilot.

27. The ship was steered east and south through the empty incoming lane, then outside the normally-traveled channel, and toward a charted area of rocky reefs. Hazelwood ordered the ship's computer program to accelerate the engines to bring the ship up to sea speed.

28. Hazelwood retired to his cabin, one flight below the bridge, leaving only one officer, Gregory Cousins, the third mate, on the bridge, in violation of Exxon policy.

29. Cousins did not have a pilotage endorsement for Prince William Sound. Cousins was fatigued due to working long hours the previous night and day. Cousins was inadequately trained to pilot the ship in Prince William Sound.

30. Robert Kagan, the helmsman, was the only other person on the bridge during this period. Robert Kagan was inadequately trained and not competent to be at the helm of the *Exxon Valdez.*

31. Second Mate LeCain was due to relieve Cousins at midnight but was not awakened to do so because he had worked long hours during the loading operations that day.

32. The vessel proceeded outside the shipping lanes into the shallow reef area. The first commands to change course and turn the vessel back towards the shipping lane, issued by Cousins, occurred just minutes before the impact.

33 The vessel was approximately one-quarter mile outside the channel when it first struck the well-marked Bligh Reef, which ripped along the starboard side with jarring impact, tearing three holes in the starboard tanks and ripping out a portion of the hull.

34. Although the ship was still navigable after the first impact, it was so far east of deep water that when Cousins tried to run the *Exxon Valdez* back towards the west, it struck a second part of the shallow reef. This second impact grounded the ship, completely stopping its progress.

35. Hazelwood, having returned to the bridge after the grounding to futilely gun the ship's engine

for at least an hour and a quarter, hoped to get the *Exxon Valdez* off the reef.

36. The scraping impact and grounding of the *Exxon Valdez* upon Bligh Reef cut open at least eight of the ship's oil tanks causing the largest oil spill in United States history. Approximately 11 million gallons of crude oil were discharged into Prince William Sound.

37. Shortly after the spill, Hazelwood's breath smelled of alcohol and empty and partially empty alcoholic beverage containers were observed in Hazelwood's cabin, in violation of Exxon's policy on alcohol. \

38. Approximately nine hours after the vessel ran aground on Blight [sic] Reef, Hazelwood submitted to blood and urine alcohol tests from which they determined that he was under the influence of alcohol.

39. Exxon was aware of the great risk of an oil spill from its tanker traffic in Prince William Sound and the potential damage to plaintiffs, that would result from the spill.

40. At all times relevant hereto, Hazelwood, Cousins, Hagan and LeCain were acting within the scope of their employment and as agents and/or representatives of defendants Exxon. Exxon is liable

for the acts of its employees, agents and representatives.

41. Hazelwood acted negligently and with reckless indifference to the interests of others throughout March 23-24, 1989.

42. Exxon acted negligently and with reckless indifference to the interests of others in allowing the *Exxon Valdez* to run aground.

43. By policy and procedure, Exxon negligently, knowingly and recklessly operates its vessels so as to achieve rapid turnaround of its oil transport. Exxon's emphasis on rapid turnaround is designed to reduce costs, even if in doing so creates great risk to the public, including these plaintiffs.

44 By policy and procedure, Exxon negligently, knowingly and recklessly undermans its vessels resulting in overwork and fatigue of its crews. Exxon's undermanning is designed to reduce costs, even if doing so creates great risk to the public, including these plaintiffs.

45. Exxon negligently, knowingly and recklessly assigned Hazelwood to Master the *Exxon Valdez*. Hazelwood had a history of alcohol abuse and related impairment known to Exxon. In 1985, with Exxon's knowledge, Hazelwood was hospitalized for alcoholism treatment and was diagnosed as suffering from dysthymia. He had been convicted of charges

involving drinking and driving in 1985 and 1988, and had his driver's license revoked three times during the five years prior to the spill. At the time of the grounding, Hazelwood was not licensed to drive an automobile due to his alcohol use. Exxon received numerous reports that Hazelwood continued to use alcohol between 1985 and 1989. [E]xxon also received reports that on occasions Hazelwood left the bridge in violation of Exxon policy. Exxon knew or should have known of Hazelwood's impairment and his lack of fitness to Master the *Exxon Valdez.* Exxon assigned Hazelwood as Master, even when doing so created great risk to the public, including these plaintiffs.

46. Exxon negligently, knowingly and recklessly allowed Cousins to operate the *Exxon Valdez* alone, in a fatigued condition, with inadequate training, and without a pilotage endorsement for Prince William Sound. Exxon allowed Cousins to operate the vessel, even when doing so created great risk to the public, including these plaintiffs.

47. Exxon negligently, knowingly and recklessly allowed Kagan to serve as an able-bodied seaman and to be at the helm of the *Exxon Valdez* in confined waters. Exxon allowed Kagan to man the helm, even when doing so created great risk to the public, including these plaintiffs.

48. Exxon's actions and omissions herein caused the oil spill and directly and proximately.

49. Exxon made representations to the public, including these plaintiffs, that they had the capability to respond to a major oil spill.

50. Exxon failed to establish and provide an adequate contingency plan to contain and clean up a major discharge of oil.

51. Exxon failed to properly plan and carry out the ensuing clean up effort.

52. The acts and omissions of Exxon described herein were undertaken with reckless indifference to the interests, right and safety of others and were sufficiently outrageous to be deemed equivalent to actual malice.

THE IMPACTS OF THE OIL SPILL

53. In the weeks and months that followed the spill, the oil predictably traveled through the waters of Prince William Sound along the Kenai Peninsula into the Cook Inlet and other areas. Oil also went through Kodiak, and along the Alaska Peninsula, eventually fouling some 1,244 miles of Alaska coastline.

54. These plaintiffs suffered damages to their businesses, their property, their quality of life (hedonic damages), incidental and consequential damages, and emotional distress as a direct and

proximate result of the oil spill. The damage caused by the oil spill to plaintiffs' property, trades and businesses, quality of life, fishing and marine life will last for years.

55. The defendants knew at all relevant times of the disastrous economic and other consequences that would result to tender operators, crew members, landowners and those who rely on the oceans [sic] bounty for their livelihood as a result of a major oil spill.

DAMAGES

56. As a result of the Exxon Valdez oil spill, Nautilus Marine Enterprises, Inc. has suffered damages including, but not limited to the following: lost earnings/income, lost retained earnings, lost shareholders' equity, loss in market share of raw materials, (in percentage of fish catch and fishermen in Prince William Sound, loss in market share of distribution, salmon roe brand removed from critical marketing channels for one year, closure of Valdez processing plant in Prince William Sound resulting in cessation of fish buying activities, of sales and distribution of firm's products, additional extreme costs of reentry into the market, losses due to cash shortages as a result of the spill, loss of future market share, (both raw and distribution), increased obligations, loss of use of Valdez dock/rental value, tortious interference with contract, and loss of good will.

57. As a result of the Exxon Valdez oil spill, plaintiff M. Thomas Waterer has suffered damages including, but not limited to the following: lost income, lost reputation, legal fees, loss of good will, additional costs incurred with the bankruptcy plan of organization of Waterkist, Inc. and loss to the value of leasehold assets through loss of production of Nautilus Marine Enterprises, Inc.

COUNT I
(NEGLIGENCE)

58. Paragraphs 1 through 57 are incorporated herein.

59. All defendants owed the plaintiffs a duty of care in the loading, transportation and handling of the crude oil that constituted the *Exxon Valdez's* cargo on March 23, 1989, as well as in the prevention, containment, cleanup and other disposition of the spill of such cargo on and after March 24, 1989.

60. The defendants breached their duty of care to the plaintiffs in their loading, transportation and handling of said crude oil, as well as in their exercise of precautionary and preventative measures and in their cleanup, prevention and containment efforts after the spill occurred.

61. As a direct and proximate result of defendants' negligence as described above, the plaintiffs have suffered damage and will suffer damage in the future, for which these defendants are jointly and severally liable, in an amount in excess of $100,000.00 per plaintiff.

Plaintiffs' legal and factual investigation of the matters herein alleged is continuing, and plaintiffs hereby give notice that they reserve the right to amend this Complaint to assert such additional claims, including, without limitations, claims on behalf of or against persons not now party hereto, as the court and the rules may allow.

WHEREFORE, the plaintiffs pray for judgment against the defendants, and each of them, jointly and severally, for the following relief:

1. The full amount of actual damages suffered by the plaintiffs against each defendants [sic] in excess of $100,000.00 per plaintiff;

2. Prejudgment interest at the maximum rate allowed by law;

3. The plaintiffs' costs, including attorneys fees, as provided by law;

4. Such other and further relief as the Court deems just and proper.

Dated: September 6, 1994

BROWN, MONZIONE, FABBRO,
ZAKARIA & SCARLETT

By /S/
RANDALL SCARLETT, ESQ.

Dated: September 6, 1994

LAW OFFICES OF CHARLES W. COE

By /S/
CHARLES W. COE, ESQ.

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

FILED
JUDGMENT IN A CIVIL CASE

SEP 16 1994
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By_____ Deputy

In re the EXXON VALDEZ

Case Number: A89-0095—CV (HRH) Consolidated
Re: All Cases

XX *JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.*

__ *DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.*

IT IS ORDERED AND ADJUSTED

THAT, based upon the jury verdicts in Phases I and III, all plaintiffs in the Mandatory Punitive Damages Class recover from the Exxon

defendants punitive damages in the amount of $5,000,000,000.00 and from defendant Hazelwood punitive damages in the amount of $5,000.00.

APPROVED:

/s/
U.S. District Court Judge

September 16, 1994 — *PHYLLIS RHODES*
Date — *Clerk*

cc:O&J
L. Miller
D. Serdahely
D. Ruskin

/S/
(By) Deputy clerk

JUDGMENT VACATED BY ORDER DATED 10-24-94 AT DOCKET NO. 6055

AGREEMENT AMONG COUNSEL REGARDING JOINT PROSECUTION, SETTLEMENT, AND DAMAGES ALLOCATION AGREEMENT

1. This agreement is entered into among counsel representing all or virtually all plaintiffs whose claims have been asserted in the consolidated Exxon Valdez Oil Spill Litigation in the United States District Court for the District of Alaska (In Re the Exxon Valdez, Case No. A89-095-CV (HRH)) and the Superior Court for the State of Alaska (In re Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-2533 Civil), for the purpose of maximizing the recovery from Exxon on behalf of all plaintiffs.

2. It is agreed by and among the undersigned counsel as follows:

A. All recoveries from defendants by any Signatory Plaintiff or group of Signatory Plaintiffs, whether by settlement or trial, will be shared among Signatory Plaintiffs in accordance with the allocation matrix attached hereto as Attachment 1 (including any revisions pursuant to paragraph B below).

B. The Allocation Committee and the casewide Executive Committee appointed by the presiding judges in federal and state court pursuant to Pretrial Order Nos. 6 (state) and 9 (federal) may approve revisions to Attachment 1 which do not reduce the aggregate allocated share of any group of Signatory Plaintiffs identified in Attachment 1 below

that percentage share of the aggregate allocated share set forth for such plaintiff group in Attachment 2. In the event that this Joint Prosecution, Settlement, and Damages Allocation Agreement is submitted to a court for approval in connection with either the continuing litigation or a settlement agreement in the consolidated Exxon Valdez Oil Spill Litigation identified above and the court's approval is conditioned on a change in the aggregate allocated share of a plaintiff group which reduces the percentage share of the aggregate allocated share for such plaintiff group below that percentage share of such plaintiff group set forth in Attachment 2, then the adversely affected plaintiff group shall have the right to withdraw from this agreement.

C. The undersigned counsel will use their best efforts to persuade any court which presides over the distribution of recoveries referred to in paragraph 1 above, to abide by this agreement and the reasonable terms of any settlement agreement with the defendants, and will refrain from taking any action to undermine the implementation of this agreement or to challenge its fairness and appropriateness.

D. This agreement supercedes the Joint Prosecution, Settlement, and Damages Allocation Agreement executed by plaintiffs' counsel in or about July 1994.

3. This agreement may be executed in several counterparts and by facsimile and, as executed, shall constitute one agreement, binding on all Signatory Plaintiffs hereto, even though all Signatory Plaintiffs do not sign the original or the same counterpart.

Brian O'Neill	Dated: 4/18, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.
_____	Dated: _____, 1995.

ATTACHMENT 1

CURRENT ALLOCATED AND "FLOOR" SHARES OF EXXON RECOVERIES

Case Fund	2.83%
Non-Signatories' Share	5.00%
Signatories' Share	92.17%

Signatory Plaintiffs	Current Share Signatories' Signatories Share*	"Floor" Share Share
FISHERIES		
Oiled 7	7.21%	77.21%
Unoiled	2.31%	2.31%
Tenders	0.64%	0.64%
Fisheries Total	80.16%	80.16%
AQUACULTURE ASSN'S	2.12%	1.91%
BUSINESSES	0.31%	0.28%
CANNERY WORKERS	0.59%	0.53%
LANDOWNERS	3.95%	3.56%
MUNICIPALITIES	2.42%	2.18%
NATIVES	7.37%	6.64%
NATIVE CORPORATIONS	0.73%	0.65%
PROCESSORS	2.33%	2.10%
RECREATIONAL USE	0.01%	0.01%

GRAND TOTAL	100%	98.02%

*"Floor" share equals 90% for non-fishing plaintiffs.

ATTACHMENT 2

	% SHARE
FISHERIES	80.16%
AQUACULTURE ASSOCIATIONS	1.91%
BUSINESSES	0.28%
CANNERY WORKERS	0.53%
LANDOWNERS	3.56%
MUNICIPALITIES	2.18%
NATIVES	6.64%
NATIVE CORPORATIONS	0.65%
PROCESSORS	2.10%
RECREATIONAL USE	0.01%
GRAND TOTAL	98.02%

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (hereinafter "Agreement") is entered into this [3rd; DWO] day of [December; PPW][January DWO], 2002, [2003 DWO] by and between the **Plaintiffs**, including their attorneys, and **Dissenting Claimants**, including their attorneys, referred to herein as "parties hereto", with respect to their extant disputes arising in connection with the consolidated litigation in In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated), United States District Court for the District of Alaska.

It is the intent and purpose of the parties and attorneys hereto in entering into and executing this Settlement and Mutual Release Agreement to implement and consummate a Settlement between the parties, including their attorneys, that has been agreed to in Letter Agreement(s) (Exhibit A) (hereinafter "Letter Agreement(s)") and to afford the terms and conditions of said Settlement full force and effect and, to that end, the terms and conditions and provisions and language of said Settlement as set out in the Letter Agreement(s) control, both as to the substantive and procedural aspects and provisions of same, and as to any apparent or actual conflict between said Settlement as set out in the Letter Agreement(s) and this Settlement and Mutual Release Agreement, or the language or interpretation or application of same.

A. PARTIES AND ATTORNEYS

1. **Plaintiffs** and their attorneys are all persons or entities (other than **Dissenting Claimants**) who, as parties, are asserting claims for damages arising out of or related to the grounding of the T/V Exxon Valdez and the resultant oil spill of March 24, 1989, in the litigation presently pending in either the United States District Court for the District of Alaska as In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated) or the Superior Court for the State of Alaska at Anchorage as In re: Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated), including all members of all classes of claimants certified by the Courts in either case and all persons or entities who have signed the 1995 Agreement Among Counsel Regarding Joint Prosecution, Settlement and Damages Allocation Agreement; and their attorneys, i.e., the Plaintiffs' Committee in said litigation, and the attorney members of same, and the attorneys for the class(es) and attorneys who represent said plaintiffs and class members; and

2. **Dissenting Claimants** and their attorneys are Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc. and Nautilus Marine Enterprises, Inc., who are plaintiffs, respectively, in Cook Inlet Processing v. Exxon Corporation, et al., Case No. A91-141 and Nautilus Marine Enterprises, Inc., et al. v. Exxon Corporation, et al., Case No. A94-417, in the United States District Court for the District of Alaska, which are consolidated with In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated), and their attorneys, i.e., Phillip Paul Weidner &

Associates, Inc. and members of said firm. The above-referenced litigation in ¶ A(1) and (2) is referred to hereinafter as "the referenced litigation."

B. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to memorialize and implement the terms and conditions on which the parties hereto have agreed to resolve all extant disputes (hereinafter "Extant Disputes") between **Plaintiffs**, including their attorneys, and **Dissenting Claimants**, including their attorneys, as reflected in said Letter Agreement(s) and the record in the referenced litigation, including the proceedings on **Dissenting Claimants'** oppositions to the United States District Court's entry of Order 317 (Clerk's Docket No. 6806), Order 327 (Clerk's No. 6895), Order 348 (Clerk's Docket No. 7319) (as affirmed with respect to **Dissenting Claimants** in In re: the Exxon Valdez, No. 99-35864, No. 99-35866, 2000 U.S. App. LEXIS 33698, 2000 WL

1844460 (9th Cir. Dec. 14, 2000)), Order No. 351 (Clerk's Docket No. 7441) and Order No. 352 (Clerk's Docket No. 7443) and In re: Exxon Valdez, Case No. A89-095-CV (HRH), (Consolidated), and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc. v. Exxon Corp., et al., and Grant Baker, Appeal Nos. 02-35285, 02-35286, and 02-35289 (United States Court of Appeals for the Ninth Circuit), including,

as to actual or potential claims between the parties hereto, all positions taken or which could have been taken, contentions made or which could have been made, or arguments advanced or which could have been advanced in the record of all court and related proceedings leading to entry of the foregoing orders and all actual or potential claims between the parties hereto asserted or which could have been asserted between and/or against any of the parties hereto, by any of the parties hereto, whether or not appearing in the record of the foregoing proceedings and pleadings at the United States Supreme Court, Ninth Circuit, and U.S. District Court levels.

C. CONSIDERATION AND PERFORMANCE

I. DISSENTING CLAIMANTS AND ATTORNEYS

As consideration for Plaintiffs' undertakings and performance, Dissenting Claimants:

1. Shall immediately seek dismissal of their appeals from Order No. 351 and Order No. 352, presently pending in the United States Court of Appeals for the Ninth Circuit in Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc. v. Exxon Corp., et al., and Grant Baker, Appeal Nos. 02-35285, 02-35286 and 02-35289, with prejudice, and Plaintiffs and Dissenting Claimants shall each bear their own costs and attorneys' fees with respect to such appeals;

2. Agree that neither of them have any right to participate in any distribution of or receive

any share of any punitive damages awarded to and collected by Plaintiffs pursuant to the

January 30, 1997 Amended Judgment in a Civil Case[1] in favor of the Court Certified Mandatory Punitive Damages Class in In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated) as a result of the Phase III verdict and any judgment returned pursuant to same (hereinafter "Certified Mandatory Punitive Damages Class Judgment") (regardless of any alteration, amendment or change in the form of relief granted by such judgment in any future proceedings in either the District Court or any Appellate Court),

3. Waive, relinquish, release and discharge any and all rights of any nature whatsoever which they contend they may have to participate in any distribution of or receive any share of any punitive damages awarded to and collected by Plaintiffs pursuant to the January 30, 1997 Amended Judgment in a Civil Case[2] in favor of the Court Certified Mandatory Punitive Damages

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[1] Said Judgment arising from the 9/16/96 Judgment in a Civil Case in Favor of the Court Certified Punitive Damages Class. (See Exhibit A at pp. 8, 11 and 16.)

[2] See n.1, id.

Class in In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated) as a result of the Phase III verdict and any judgment returned pursuant to same (regardless of any alteration, amendment or change in the form of relief granted by such judgment in any future proceedings in either the District Court of any Appellate Courts);

4. Agree that each of them are bound by the terms and conditions of Order No. 351 and Order No. 352 for all purposes; and

5. Waive, relinquish and discharge any right of any nature whatsoever which either of them may have to participate in any distribution of or receive any share of any recoveries by Plaintiffs pursuant to either the Amended Plan of Allocation approved by the Court in Order No. 317, Order 327 and Order No. 351 or the Amended Plan of Distribution of Allocations to the Processor Claim Category approved by the Court in Order No. 352 , notwithstanding any of the

terms and conditions of the Amended Plan of Allocation or the Amended Plan of Distribution of Allocations to the Processor Claim Category.[3]

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[3] It being expressly understood and agreed that Dissenting Claimants preserve and do not waive all their other rights, claims, causes of action, damages, rights to proceeds, recoveries, or suits as to either

6. It being expressly understood and agreed that all other claims, causes of action, damages, rights to proceeds, recoveries, or suits as to either compensatory damages or punitive damages against the Exxon defendants, including those Exxon defendants named in the referenced litigation, including all compensatory damages as presented and as further preserved in the Letter Agreement(s) and herein, and all punitive damages not the subject of the "Certified Mandatory Punitive Damages Class Judgment" are preserved and are not waived by Dissenting Claimants, including all claims for interest, costs and attorney's fees;[4]

7. Release the Plaintiffs' Committee and all attorney members of same, and all attorneys for

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compensation or punitive damages, including but not limited to as set out in the Letter Agreement(s) and in ¶¶C(I)(6) (with n. 4) following, and C(II)(1), infra.

[4] It is also expressly understood and agreed that any monies received to date by Dissenting Claimants as a result of claims/causes of action relating to the Exxon Valdez grounding and oil spill will be likewise retained by them for their exclusive use and benefit, with no such claims or causes of action to same to be asserted by the Plaintiffs' Committee or its member counsel and/or the clients and/or the plaintiffs and/or the class(es) and/or class members they represent, including all parties to the joint prosecution agreement, who hereby agree to, and do, forego and waive and release any asserted claim or right to do so.

the class(es) and Plaintiffs from any potential or actual claims, causes of action, damages or suits.

II. PLAINTIFFS

As consideration for Dissenting Claimants' undertakings and performance, Plaintiffs and their attorneys:

1. Waive, relinquish, release and discharge all rights and covenant not to assert any such rights (a) to seek, convert, claim, participate in or receive any share of, or assert any claim

or lien for costs, interest or attorney's fees as to, any proceeds or recoveries of any nature whatsoever (whether by trial, judgment, or Settlement or otherwise) by Dissenting Claimants, which rights shall be exclusively in the Dissenting Claimants and their counsel, as to claims asserted by Dissenting Claimants in Cook Inlet Processing v. Exxon Corporation, et al., Case No. A91-141 and Nautilus Marine Enterprises, Inc., et al. v. Exxon Corporation, et al., Case No. A94-417, or other claims for compensatory and punitive damages that may be asserted by Dissenting Claimants against the Exxon defendants, including the Exxon defendants named in these actions and/or the referenced litigation, including but not limited to all claims that are valid in light of the Ninth Circuit decision in In re: the Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001), or any other claims for compensatory

or punitive damages or other relief Dissenting Claimants may have or assert against said Exxon defendants, or (b) assert or claim any right to participate in, affect, control, compromise, settle, or impact said claims, proceeds, or recoveries of any nature by Dissenting Claimants or the prosecution by Dissenting Claimants of litigation to perfect, enjoy, or recover same, notwithstanding the terms and provisions of the Amended Plan of Allocation approved by Order No. 351, the terms and provisions of the Amended Plan of Distribution of Allocations to the Processor Claim Category approved by Order No. 352 or the terms and provisions of the Agreement Among Counsel Regarding Joint Prosecution, Settlement, and Damages Allocation Agreement, or the procedural or substantive basis, nature or history of the referenced litigation;[5]

2. Release and waive all claims, liens, causes of action, damages, or suits, potential or actual, against the Dissenting Claimants and their counsel.

D. MUTUAL RELEASE

Each Dissenting Claimant, on behalf of itself and its officers, directors, agents, attorneys, shareholders, owners, employees, trustees, administrators, sureties, insurers, successor and predecessors in interest, assigns and receivers, and

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[5] See also n.3 and 4, supra.

each of them, past and present (hereinafter severally and collectively "**Dissenting Claimants**"), hereby releases and fully discharges **Plaintiffs** their agents, attorneys, employees, trustees, administrators, sureties, insurers, successors and predecessors in interest, assigns and receivers, and each of them, past and present (hereinafter severally and collectively "**Plaintiffs**"), from every claim, demand, liability, action and cause of action whatsoever, of every kind and nature, whether arising out of contract, tort, statute or otherwise, in law or in equity, including any claims for compensatory, special, liquidated and punitive damages, penalties, costs, expenses, and attorneys' fees, and other types of loss or losses, whether presently known or unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, arising or alleged to arise out of, or in any way relating to any of the facts which are the subject of the Extant Disputes resolved by this Agreement.

Plaintiffs and their attorneys, on behalf of themselves and their agents, attorneys, employees, trustees, administrators, sureties, insurers, successors and predecessors in interest, assigns and receivers, and each of them past and present, hereby release and fully discharge **Dissenting Claimants** and their officers, directors, agents, attorneys, shareholders, owners, employees, trustees, administrators, sureties, insurers, successors and predecessors in interest, assigns and receivers, and each of them, past and present, from every claim, demand, liability, action and cause of action

whatsoever, of every kind and nature, whether arising out of contract, tort, statute or otherwise, in law or in equity, including all claims for compensatory, special, liquidated and punitive damages, penalties, costs, expenses, and attorneys' fees, and other types of loss or losses, whether presently known or unknown, fixed or contingent, matured or

unmatured, suspected or unsuspected, arising or alleged to arise out of, or in any way relating to, any of the facts which are the subject of the Extant Disputes resolved by this Agreement.

Each party warrants to the other that it has not assigned or transferred any potential or actual claim or part or portion of any claim released herein, that is, any claim directed specifically at or lying directly against or between the parties hereto [except to the extent Dissenting Claimants may have done so for any claims or part or portion of any claims directed specifically at or lying directly against the Exxon defendants by those certain documents dated and/or executed on or about 11-18-89 (Nautilus Marine Enterprises, Inc.) and 5-22-90 (Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc.), and provided to Exxon at the time of the payment of certain money by Exxon to NMI and CIP and characterized in the referenced litigation as alleged "Releases and/or Assignments" as opposed to

"Claims Receipts," referred to hereinafter as "Alleged Releases and/or Assignments"]. Each party further warrants to the other that if such assignment or transfer has occurred, other than as to said "Alleged Releases and/or Assignments," the breaching party will indemnify and hold the non-breaching party harmless from and against any claims based on or arising out of any such assignment or transfer. This obligation to indemnify and hold harmless shall include the obligation to pay reasonable attorneys' fees and costs actually incurred, whether or not litigation has been commenced.

The intention of the parties being to fully, completely and forever settle, compromise, release and discharge all claims released herein, each party warrants that it will not, by itself or in concert with others, maintain or cause to be maintained any demands, actions, lawsuits, arbitrations, or any other proceedings against the other party in any capacity whatsoever as a result of or pertaining to the claims released and discharged herein.

Each party acknowledges that neither the other party nor any agent or attorney of the other party has made any promises, representations or warranties whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce that party to execute this Release, and each party acknowledges that it has not

executed this Release in reliance upon any such promises, representations, or warranties not contained herein. Each party further acknowledges that it has had a full and complete opportunity to independently investigate all facts material hereto, and has done so.

It is understood that the nature and extent of any potential damages and injuries which may have been sustained by either party may substantially change or worsen and that new damages may be discovered in the future. It is understood that it is each party's intent to unequivocally release and forever discharge the other party from any and all claims accrued, accruing, or which may accrue in the future as a result of, in connection with, or related to any changes in the nature or extent of said damages or injuries or as a result of the discovery of new damages or injuries. With respect to the foregoing, each party acknowledges its familiarity with the decision in the case of Witt v. Watkins, 579 P.2d 1065 (Alaska 1978), and it is still each party's intent to release the other party from any and all such claims.

Each party hereby acknowledges its familiarity with the decisions in the cases of Young v. State, 455 P.2d 889 (Alaska 1969) and Totem Marine T. & B. v. Alyeska Pipeline, 584 P.2d 15 (Alaska 1978), and any protections of the holdings therein relevant to the present case are hereby waived, except as otherwise provided herein. Subject to the terms of this agreement, each party states that it is that party's true intent and desire to

fully release all the individuals, firms or corporations who may in any way have been connected with any claims released herein as fully as though they were specifically listed and named herein. Each party specifically represents that

it understands that it is not required or compelled to agree to the terms of this Release, and acknowledges the availability of other reasonable alternatives and adequate remedies, but has nonetheless freely, voluntarily and intelligently chosen not to pursue the same for the purposes of making a full, final and complete compromise of the claims released herein.

This Release is not a release of any party's obligations under this Agreement.

E. GENERAL PROVISIONS

1. This Agreement is entered into strictly for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

2. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties. The interpretation and enforcement of this Agreement shall be governed by the law of the State of Alaska. Each party acknowledges that it has had ample opportunity to consult with its attorneys concerning this Agreement, and agrees that this Agreement shall be construed according to the fair intent of the language as a whole, and not for or against any of the parties.

3. The parties agree that the terms and conditions of this Agreement shall not be disclosed to anyone other than the parties and their attorneys, unless such disclosure is compelled by Court order or necessary in order for any party to enforce the terms and conditions of this Agreement, or for Dissenting Claimants to continue to negotiate, settle, or prosecute and collect the proceeds of the other remaining claims and causes of action against the named defendants referred to above.

4. The parties, and each of them, agree that they are expressly bound by their promises, undertakings and obligations under this Agreement notwithstanding that there is no present intention of seeking the approval of this Agreement by the United States District Court

for the District of Alaska in In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated) or the Superior Court for the State of Alaska at Anchorage in In re: Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated).

5. Each of the parties agree and covenant that they will take all steps and/or file all pleadings necessary to implement the terms and conditions of this agreement in the United States District Court for the District of Alaska in In re: Exxon Valdez, Case No. A89-095-CV (HRH) (Consolidated), the Superior Court for the State of Alaska at Anchorage

in In re: Exxon Valdez Oil Spill Litigation, Case No. 3AN-89-2533 Civil (Consolidated) or the United States Court of Appeals for the Ninth Circuit in Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc. v. Exxon Corp., et al., and Grant Baker, Appeal Nos. 02-35285, 02-35286 and 02-35289, and will execute and deliver any other appropriate documents to implement same.

6. This Settlement and Mutual Release Agreement and the terms and conditions of same are not confidential.

ACCEPTED AND AGREED: /s/ Dated: 1/3/2003
David W. Oesting
On Behalf of Plaintiffs' Committee Including All Attorney Members of Same, and the Clients, Plaintiffs and Class(es) and Class Members They Represent, and all Plaintiffs and all Parties to the Joint Prosecution Agreement

ACCEPTED AND AGREED: /s/ Dated: 12/18/2002
Phillip Paul Weidner
On Behalf of Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc.,

and Nautilus Marine Enterprises, Inc.

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SETTLEMENT OFFER
SETTLEMENT COMMUNICATION / PRIVILEGED
[1]

July 3, 2002

David W. Oesting, Esq. *HAND DELIVERY/FAX to*
Davis Wright Tremaine LLP *257-5399 and U.S.*
701 West 8TH Avenue, Suite 800 *MAIL*
Anchorage, Alaska 99501-3408

---

[1] This communication is advanced for settlement purposes only. Any statements contained herein and/or any statements made in connection with same are advanced in an effort to reach an amicable resolution of this matter and with the expectation of all applicable privileges and evidentiary exclusions. No waiver, express or implied, of the attorney-client privilege or any other constitutional or evidentiary privilege is intended or made.

All Members of the Plaintiffs' Committee
c/o David W. Oesting, Esq. *HAND DELIVERY/*
Davis Wright Tremaine LLP *FAX to 257-5399*
701 West 8TH Avenue, Suite 800 *and U.S. MAIL*
Anchorage, Alaska 99501-3408

All Parties to the Joint Prosecution Agreement
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Re: "Robins Dry Dock" Claims of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc. in In Re: The Exxon Valdez, Case No. A89-095 CI (HRH) Pursuant to

the Ninth Circuit Opinion and Remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001)

Dear Mr. Oesting, et.al:

Pursuant to our prior discussions and the substantive and procedural history of this case and position(s) of Cook Inlet Processing, Inc. (hereinafter "Cook Inlet") and Nautilus Marine Enterprises, Inc. (hereinafter "Nautilus Marine") of record, and their vested rights to seek, obtain, recover and retain appropriate compensation for their causes of action/damages as to the "Robins Dry Dock" claims arising from the Exxon Valdez grounding and oil spill of March 24, 1989, including the litigation in In Re: The Exxon Valdez, Case No. A89-095 CI (HRH), in light of the Ninth Circuit opinion and remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001), I am writing to formally offer a proposal to resolve all pending issues between the Plaintiffs' Committee, all parties to the joint prosecution agreement (i.e., the Plaintiffs Committee and member attorneys and all clients and plaintiffs whom they represent, including any such class(es) and class members and all parties to the joint prosecution agreement)[2] and my clients, Cook Inlet and Nautilus Marine.

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[2] As used herein, "all parties to the joint prosecution agreement" excludes Cook Inlet and Nautilus Marine who maintain they are not bound by same. Likewise, Cook Inlet and Nautilus Marine are excluded as to references to "clients" or "class members" or "class(es)" or "plaintiffs" wherein reference to same is linked to references to "members of the Plaintiffs' Committee" and/or

In particular, I propose that we agree and proceed for mutual exchange of good and valuable consideration, the receipt and sufficiency of which is acknowledged, as follows:

1. In view of said Ninth Circuit remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001), holding that such "Robins Dry Dock claims" are valid and need to be resolved, and my clients' rights to said claims and causes of action and any related claims, or any other claims my clients may have against Exxon which relate to the Exxon Valdez grounding and oil spill and the proceeds of same, my clients would individually and/or jointly with each other (with the Plaintiffs' Committee and its member counsel and/or the clients and/or the class(es) and/or class members and/or plaintiffs they represent, including all parties to the joint prosecution agreement, agreeing to no attempts to assert, prosecute, control, impact, affect, claim, recover, settle, compromise, lien, retain or convert such claims/causes of action or proceeds of same or assertion of authority to do so, and to forego, release and waive any such asserted rights or claims to do so) either prosecute said claims/causes of action or settle them directly with the Exxon defendants.[3]

"Plaintiffs' Committee" and/or "attorneys" or "counsel" belonging to same.

3 This would include an acknowledgement by the Plaintiffs' Committee and member counsel and their

2. All proceeds of said activities, including the proceeds of settlement or trial of any and all such "Robins Dry Dock" claims, and any related claims, or any other claims my clients may have against Exxon which relate to the Exxon Valdez grounding and oil spill would be retained exclusively by my clients for their benefit; and the Plaintiffs' Committee, and its member counsel and, class(es) and/or class members and/or the plaintiffs and/or clients they represent, including all parties to the joint prosecution agreement, would agree not to, (and would waive, forego and release any asserted claim or right to), seek to assert, prosecute, affect,

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clients and class(es), class members they represent, and parties to the joint prosecution agreement of full authority in separate counsel, i.e., the undersigned or other appropriate counsel, on behalf of my clients to prosecute said claims and/or settle them and execute appropriate documents and releases in that regard and retain the proceeds without any claim to same by the Plaintiffs' Committee and member counsel and/or the clients, plaintiffs class(es), class members they represent, or parties to the joint prosecution agreement.

control, impact, recover, settle, compromise, claim, lien, retain or convert, or assert authority to do so regarding any said claims, causes of action, or proceeds via the alleged "joint prosecution agreement" or any other legal or substantive or procedural theory or avenues or means.

3. Any monies received to date by my clients as a result of claims/causes of action relating to the Exxon Valdez ground and oil spill will be likewise retained by them for their exclusive use and benefit, with no such claims or causes of action to same to be asserted by the Plaintiffs' Committee or its member counsel and/or the clients and/or the plaintiffs and/or the class(es) and/or class members they represent, including all parties to the joint prosecution agreement, who will agree to forego and waive and release any asserted claim or right to do so.

4. Thus, neither Plaintiffs' Committee and its member attorneys nor the clients nor class(es) nor class members nor plaintiffs they represent, including all parties to the joint prosecution agreement, will assert any claim, lien, right to recovery, settle, compromise, retain, or convert, or attorney's fees, claim for costs, etc., nor seek to assert, prosecute, affect, control, recover, settle, compromise or impact same or assert authority to do so as to said claims/causes of action or proceeds referenced above in ¶¶ 1, 2 and 3, and they will

agree to forego, release and waive any claim or asserted right to do so.

5. My clients will agree to forego any further attempts to participate in future monies collected by the Plaintiffs' Committee and its member counsel and the clients and/or plaintiffs and/or class(es) and/or class members they represent, including all parties to the joint prosecution agreement, to be distributed under the matrix to said clients of the Plaintiffs' Committee and member counsel, i.e., said class(es) class members/plaintiffs/parties to the joint prosecution agreement regarding future punitive damage monies so collected or any other compensatory monies collected by the Plaintiffs' Committee and its member attorneys or the clients and/or class(es) and/or class members and/or plaintiffs they represent and/or all parties to the joint prosecution agreement.[4]

6. My clients will execute a full release of the Plaintiffs' Committee and its member attorneys and the clients and class(es) and/or class members and/or plaintiffs they represent and

---

[4] This will include Cook Inlet. and Nautilus Marine agreeing to dismiss their appeals of record, with all parties to same to bear their own costs and attorney's fees.

all parties to its joint prosecution agreement from and/or as to any and all causes of action, claims or demands or liens of any parties, for any damages, monies, attorney fees, or costs, arising from the joint prosecution agreement, the Exxon Valdez grounding and oil spill or related litigation, legal representation, or events, including any future settlement or resolution of such claims/causes of action set out in ¶¶ 1, 2 and 3, supra, and the Plaintiff's Committee and attorney members of the Plaintiffs' Committee and the clients and/or plaintiffs and/or and class(es) and/or class members they represent and all parties to the joint prosecution agreement would likewise execute a full release of my clients and their counsel (including undersigned counsel) from any and all claims/causes of action or demands or liens of any parties for any damages, monies, attorney fees, or costs relating to and/or arising from such claims/causes of action, including any future settlement or resolution of same (such claims/causes of action set out in ¶¶1, 2 and 3, supra), the joint prosecution agreement, the Exxon Valdez grounding and oil spill, or other related litigation or representation.

As you know, my clients have taken, and take, the position that given the matters of record, the events

that have transpired in connection with this litigation, and the initial events surrounding the execution of the purported releases by them as to Exxon, coupled with the history of the activities of the Plaintiffs' Committee counsel, and parties to the joint prosecution agreement, the representations to my clients and duties, acts and/or omissions of the Plaintiffs' Committee and member counsel in that regard, and the circumstances and acts, understandings and/or omissions in connection with any execution of the joint prosecution agreement, that the Plaintiffs' Committee and its counsel members and/or the clients and/or plaintiffs and/or class(es) and/or class members they represent and parties to the joint prosecution agreement have caused serious economic harm to my clients, and further, that there is no right in the Plaintiffs' Committee, its counsel members, or said clients or plaintiffs or class(es) and/or class members or parties to the joint prosecution agreement to take the position that my clients are purportedly bound by the joint prosecution agreement, and further, that no such agreement or any other understandings or rule of law or procedures would allow the Plaintiffs' Committee, its counsel members or the clients and/or class(es) and/or class members and/or plaintiffs they represent and/or parties to the joint prosecution agreement to affect, control, impact, settle, compromise, assert or prosecute the claims/causes of action of my clients regarding the Robins Dry Dock claims/causes of action or damages and/or other claims and causes of action and/or

recoveries set out in ¶¶ 1, 2 and 3, supra, or to impact, affect or claim, lien or retain any proceeds of same or to assert authority to do so.

Moreover, it is my clients' position that any attempt by Plaintiffs' Committee, its counsel members, or the clients and/or plaintiffs and/or class(es) and/or class members they represent and/or parties to the joint prosecution agreement to do so that has occurred or may be occurring is likewise causing serious economic harm and damages to my clients' abilities to attempt to effectuate via settlement or trial and judgment appropriate recovery from Exxon in that regard.

Accordingly, absent acceptance of this settlement offer, my clients preserve, and in no way release, forego or compromise their rights to seek appropriate relief from and as to the Plaintiffs' Committee, its counsel members, or the clients, and/or plaintiffs and/or class(es) and/or class

members they represent, and/or parties to the joint prosecution agreement concerning any and all causes of action.

However, this mechanism will allow the Plaintiffs' Committee, its counsel members, and the clients and/or plaintiffs and/or class(es) and/or class members they represent and parties to the joint prosecution agreement to continue to focus their efforts on obtaining appropriate punitive damages award/proceeds from Exxon and sharing same in a fashion as appropriate under the matrix with those litigants other than my clients, while allowing my clients to receive their compensatory damages/settlement funds/proceeds as to their claims/causes of action from Exxon directly, and to retain the full proceeds of same.

Further, it will resolve any potential litigation between the Plaintiffs' Committee (including the attorney members of same and the clients and plaintiffs and class(es) and/or class members they represent and/or parties to the joint prosecution agreement) and my clients, Cook Inlet and Nautilus Marine.

I have authority to advance this settlement proposal/offer, which I formally do on behalf of my clients, and would ask that you accept same on behalf of the Plaintiffs' Committee and all parties to the joint prosecution agreement (including the attorney members of same and the clients and/or

plaintiffs and/or class(es) and/or class members they represent and/or all partners to the joint prosecution agreement) by signing below.

In that event, such executed acceptance on any original, or photocopy, or facsimile copy of this letter (and a similar original or copy of same) may be considered a binding agreement with full force and effect.

I urge you to accept this proposal forthwith since any ongoing attempts/position by the Plaintiffs' Committee and/or its counsel members and/or the clients and/or plaintiffs and/or class(es) and/or class members they represent and/or parties to the joint prosecution agreement to claim a right to so prosecute, affect, assert, control, settle, compromise, claim, lien, recover, impact, retain or convert, or assert authority to do so as to such Robins Dry Dock or other referenced claims/causes of action of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc., or their proceeds, constitute irreparable and substantial harm and injury to my clients' economic interests and impede efforts to reach an appropriate resolution with Exxon concerning same.

This settlement proposal/offer will remain open for seven days from the date of its transmission in the absence of prior written rejection and/or withdrawal.

Thanking you in advance for your attention to this matter, and awaiting what I trust will be a timely acceptance, I remain,

Sincerely yours,

WEIDNER & ASSOCIATES, INC.
A Professional Corporation
Attorneys for Nautilus Marine Enterprises, Inc.
and Cook Inlet Processing, Inc.

/s/

Phillip Paul Weidner

PPW/mm

cc: Nautilus Marine Enterprises, Inc.
Cook Inlet Processing, Inc.

ACCEPTED AND AGREED:

David W. Oesting
On Behalf of Plaintiffs' Committee, Including
All Attorney Members of Same, and The Clients,
Plaintiffs and Class(es) and Class Members they Represent,
and All Parties to the Joint Prosecution Agreement

Exhibit A page 6 [PPW]

Davis Wright Tremaine LLP

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RECEIVED
JUL 16 2002
WEIDNER & ASSOCIATES

July 12, 2002

Mr. Phillip Paul Weidner
PHILLIP PAUL WEIDNER AND ASSOCIATES
330 "L" Street, Suite 200
Anchorage, AK 99501

Re: "Robins Dry Dock" Claims of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc. in In Re: Exxon Valdez, Case No. A89-0095 CI (HRH) Pursuant to the Ninth Circuit Opinion and Remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2002)

Dear Mr. Weidner:

I am responding to your letter dated July 3, 2002, on behalf of all of the addressees of the same. This response is presented subject to the same conditions set out in footnote 1 to your letter: that is, it is subject to all of the restrictions and limitations with respect to disclosure contained in Fed. R. Evid. 408.

First, I believe that the settlement structure which you propose contains the framework and substance for a viable settlement. That said, we do not accept the same as presented.

In order for All Plaintiffs to complete their evaluations of your proposal, several matters need to be clarified. These are:

1. Your settlement proposal was made on behalf of only Nautilus Marine Enterprises, Inc. ("Nautilus") and Polar Equipment, Inc., d/b/a Cook Inlet Processors, Inc. ("CIP") You have multiple other clients who only very recently in the litigation have opposed both the Court's approval of the Allocation Plan and the Amended Plan of Distribution of Allocations to the Processor Claim Category. These are Phillip Paul

Weidner, Ana Cristina Weidner, Phillip Thor Weidner, Avlon Leasing, Inc., and M. Thomas Waterer as Assignee of the claims of Larry Gray and Theodor Jewel. Needless to say, All Plaintiffs do not understand the reason or basis for the joinder of these additional parties objections with respect to either the Allocation Plan or the Processor Distribution Plan. Indeed, none of them even have claims in the Processor Claim Category. Moreover, none of them have taken any steps of any nature whatsoever to protest the respective distribution plans applicable to the categories of claims these claimants hold. Nevertheless, they purport to appeal from Order Nos. 351 and 352. If your settlement proposal were accepted, would the appeals of these additional claimants from Order Nos. 351 and 352 be dismissed with prejudice? If not, it is highly improbably that there is any possibility of settlement between All Plaintiffs and Nautilus or CIP.

2. While All Plaintiffs are strongly inclined to agree to your proposal, as set forth in paragraphs 2, 3, 5 and 6 with respect to what you characterize as your clients' "Robins Dry Dock" claims for compensatory damages of any nature whatsoever, they cannot and will not agree to the same treatment with respect to your clients' claims for punitive damages. All of your clients are members of the mandatory punitive damages class with respect to claims for punitive damages. All Plaintiffs are in no position to release your clients from, or relieve them of, the burdens of this class

status. For purposes of analyzing your settlement proposal, I assumed that the over breadth of your definition of the claims with respect to which All Plaintiffs would release and or waive any or interest was not in fact intended to include claims for punitive damages by your clients. All Plaintiffs have consistently and successfully taken the position that Nautilus and CIP released claims which they may have with respect to punitive damages. This is not to say, however, that as long as Nautilus and CIP agree that they have no right to share in any component or aspect of the punitive damages collected by all other plaintiffs at the conclusion of this litigation pursuant to the September 16, 1996 judgment in favor of the mandatory punitive damages class, your clients are not free to attempt to pursue by separate action (and independently of any of the cases consolidated in A89-95-CI (HRH)), claims for punitive damages against the Exxon Defendants.

I look forward to your clarification with respect to the above points. Assuming your responses are satisfactory, then a settlement along the lines outlined in your letter will in all probability, be acceptable to All Plaintiffs. That is:

A. All your clients agree to dismiss with prejudice their appeals from Order Nos. 351 and 352 and to be bound by the terms and conditions of those Orders for all purposes;

B. All of your clients execute formal releases as outlined in paragraph 6 of your letter;

C. All Plaintiffs execute mutual releases as set forth in paragraph 6 of your letter; and,

D. All Plaintiffs agree to release and relinquish any and all claims of any nature whatsoever which they may have to Nautilus's or CIP's "Robins Dry Dock" claims for compensatory damages and the proceeds thereof.

Thank you for your attention to the foregoing. I look forward to hearing from you with regard to same.

Very truly yours,

DAVIS WRIGHT TREMAINE LLP

/s/
David W. Oesting

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SETTLEMENT OFFER
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July 15, 2002

David W. Oesting, Esq. *FAX to 257-5399*
Davis Wright Tremaine LLP *and U.S. MAIL*
701 West 8TH Avenue, Suite 800

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[1] This communication is advanced for settlement purposes only. Any statements contained herein and/or any statements made in connection with same are advanced in an effort to reach an amicable resolution of this matter and with the expectation of all applicable privileges and evidentiary exclusions. No waiver, express or implied, of the attorney-client privilege or any other constitutional or evidentiary privilege is intended or made.

Anchorage, Alaska 99501-3408

All Members of the Plaintiffs' Committee
c/o David W. Oesting, Esq. *FAX to 257-5399*
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All Parties to the Joint Prosecution Agreementc/o
David W. Oesting, Esq. *FAX to 257-5399*
Davis Wright Tremaine LLP *and U.S. MAIL*
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Re: "Robins Dry Dock" Claims of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc. in In Re: The Exxon Valdez, Case No. A89-095 CI (HRH) Pursuant to the Ninth Circuit Opinion and Remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001)

Dear Mr. Oesting, et al:

I am writing in response to Mr. Oesting's letter of July 12, 2002 (hereinafter "Oesting letter") and pursuant to our phone conversations of July 15, 2002 to clarify the terms and conditions of settlement which I believe are acceptable to our respective clients, i.e., my clients and your clients, including "All Plaintiffs," and all addressees of my July 3, 2002 letter, agreement to which settlement I am asking

Mr. Oesting to confirm by either signing below, or writing me a responsive letter to said effect.

Exhibit A Page 10 [PPW]

For purposes of clarity, I will address the issues as they were referred to by Mr. Oesting in the numbered and lettered paragraphs of his July 12, 2002 letter.

1. Concerning¶1, p. 1, I believe the record reflects that the only appeals taken by the parties addressed in said paragraph as to Order Nos. 351 and 352 were those by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc., d/b/a Cook Inlet Processors, Inc.. Accordingly, dismissal of the Ninth Circuit appeals with prejudice by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., which is agreed to and will be forthcoming under the terms of the settlement, should be sufficient. If in fact you require that any of the other parties addressed in ¶ 1 take steps to effectuate dismissal of such appeals filed by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., they agree to, and will do so.

2. Concerning ¶2 of p. 2:

a. It would be the intent and effect of the settlement that Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., in light of the proceedings and position(s) of record and such settlement, "agree that they have no right to share in any component or aspect of the punitive damages collected by all other plaintiffs at the conclusion of this litigation pursuant to the September 16, 1996 judgment in favor of the mandatory punitive damages class" (Oesting letter at p. 2, ¶ 2);

b. However, Nautilus Marine Enterprises, Inc. and Cook Inlet Processing, Inc. would remain free, to attempt to pursue, via either separate action(s) and/or their "Robins Dry Dock" claims/causes of action, all recovery and/or further settlement regarding all other damages and claims/causes of action against the Exxon defendants that might be due Nautilus Marine Enterprises, Inc. and Cook Inlet Processing, Inc., including all compensatory damages and "punitive damages [not so] collected...pursuant to [such] September 16, 1996 judgment." Id.

Accordingly, subject to these clarifications, pursuant to the terms and conditions of my letter of July 3, 2002, as so clarified, I am willing to, and do, agree to such settlement on behalf of my clients Nautilus Marine Enterprises, Inc. and Polar Equipment Inc. d/b/a Cook Inlet Processors, Inc., and ask you to do

likewise (by either acknowledging your agreement below and returning a copy of same to me, or acknowledging agreement to such settlement under separate cover) with said exchange of settlement letters constituting a binding settlement, to be further effectuated by formal documents encompassing the provisions of same.

Said settlement, if so confirmed and agreed, will conform to such correspondence and said clarifications and, in particular, ¶¶ A-D at pp. 2-3 of Mr. Oesting's letter of July 12, 2002:

Exhibit A Page 11 [PPW]

David W. Oesting, et al.
July 15, 2002
Page 3

A. All of [my] clients [Nautilus Marine Enterprises, Inc., Polar Equipment, Inc. d/b/a Cook Inlet Processors, and, to the extent necessary, Phillip Paul Weidner, Ana Christina Weidner, Phillip Thor Weidner and the related parties, Avalon Leasing, Inc., M. Thomas Waterer as assignee of the claims of Larry Gray and Theodore Jewel] agree to dismiss with prejudice their appeals from Order Nos. 351 and 352 and to be bound by the terms and conditions of those Orders for all purposes;

B. All of [my] clients [will] execute formal releases as outlined in paragraph 6 of [my] letter [of July 3, 2002];

C. All Plaintiffs [will] execute mutual releases as set forth in paragraph 6 of [my] letter [of July 3, 2002]; and

D. All Plaintiffs agree to release and relinquish any and all claims of any nature whatsoever which they may have to Nautilus's or CIP's "Robins Dry Dock" claims for compensatory damages and the proceeds thereof.

If you agree with the above, and agree to settle as proposed in my letter of July 3, 2002, as addressed by your letter of July 12, 2002, and as clarified above, please so indicate in writing, or by signing below.

Thank you for your attention to this matter.

Sincerely,
WEIDNER & ASSOCIATES, INC.
Counsel for Nautilus Marine Enterprises, Inc.
and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc.

/s/
Phillip Paul Weidner

cc: Nautilus Marine Enterprises, Inc.

Cook Inlet Processing, Inc.

Exhibit A Page 12 [PPW]

David W. Oesting, et al.
July 15, 2002
Page 4

ACCEPTED AND AGREED:

_____ _____

David W. Oesting Date
On Behalf of Plaintiffs' Committee, Including
All Attorney members of Same, and the Clients,
Plaintiffs and Class(es) and Class Members
They Represent, and all Plaintiffs and all Parties to the Joint
Prosecution Agreement

Exhibit A Page 13 [PPW]

Davis Wright Tremaine LLP

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RECEIVED
JUL 18 2002
WEIDNER & ASSOCIATES

July 17, 2002

VIA FACSIMILE
Mr. Phillip Paul Weidner
PHILLIP PAUL WEIDNER AND ASSOCIATES
330 L Street, Suite 200
Anchorage, AK 99501

Re: *"Robins Dry Dock"* Claims of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc. in In Re: Exxon Valdez, Case No. A89-095 CI (HRH) Pursuant to the Ninth Circuit Opinion and Remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2002)

Dear Phil:

If you will re-issue your amended letter of July 15, 2002 with the changes that I have made to it on the enclosed copy of page 2. I am still waiting to hear from two people, both of whom I have called today. It is my expectation that I will sign your letter some time late this afternoon. When reissuing it, perhaps you could put a signature line and date line on it for me in addition to the change I would like made on page 2. Thanks.
Very truly yours,

DAVIS WRIGHT TREMAINE LLP
/s/
David W. Oesting

DWO/kjl
Enc.

Exhibit A Page 14 [PPW]

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PRIVILEGED[1]

July 17, 2002

David W. Oesting, Esq. *FAX to 257-5399*
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[1] This communication is advanced for settlement purposes only. Any statements contained herein and/or any statements made in connection with same are advanced in an effort to reach an amicable resolution of this matter and with the expectation of all applicable privileges and evidentiary exclusions. No waiver, express or implied, of the attorney-client privilege or any other constitutional or evidentiary privilege is intended or made.

All Members of the Plaintiffs' Committee
c/o David W. Oesting, Esq. *FAX to 257-5399*
Davis Wright Tremaine LLP *and U.S. MAIL*
701 West 8TH Avenue, Suite 800
Anchorage, Alaska 99501-3408

All Parties to the Joint Prosecution Agreement
c/o David W. Oesting, Esq. *FAX to 257-5399*
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Anchorage, Alaska 99501-3408

Re: "Robins Dry Dock" Claims of Cook Inlet Processing, Inc. and Nautilus Marine Enterprises, Inc. in In Re: The Exxon Valdez, Case No. A89-095 CI (HRH) Pursuant to the Ninth Circuit Opinion and Remand in In Re: The Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001)

Dear Mr. Oesting, et al:

Pursuant to Mr. Oesting's letter of July 17, 2002, I am reissuing my letter of July 15, 2002 amended to conform to the changes requested by Mr. Oesting.

This letter constitutes such re-issuance as amended and I trust that it is acceptable to you, and Mr. Oesting will sign and date it to confirm our agreement, and return a copy to me, or so acknowledge such agreement under separate cover, either of which methods is acceptable.

I am writing in response to Mr. Oesting's letter of July 12, 2002 (hereinafter "Oesting letter") and pursuant to our phone conversations of July 15, 2002 to clarify the terms and conditions of settlement which I believe are acceptable to our respective clients, i.e., my clients and your clients, including "All Plaintiffs," and all addressees of my July 3, 2002 letter, agreement to which settlement, as noted, I am asking Mr. Oesting to confirm by either signing below, or writing me a responsive letter to said effect.

For purposes of clarity, I will address the issues as they were referred to by Mr. Oesting in the numbered and lettered paragraphs of his July 12, 2002 letter.

1. Concerning¶1, p. 1, I believe the record reflects that the only appeals taken by the parties addressed in said paragraph as to Order Nos. 351 and 352 were those by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc., d/b/a Cook Inlet Processors, Inc.. Accordingly, dismissal of the Ninth Circuit appeals with prejudice by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., which is agreed to and

will be forthcoming under the terms of the settlement, should be sufficient. If in fact you require that any of the other parties addressed in ¶ 1 take steps to effectuate dismissal of such appeals filed by Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., they agree to, and will do so.

2. Concerning ¶2 of p. 2:

a. It would be the intent and effect of the settlement that Nautilus Marine Enterprises, Inc. and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc., in light of the proceedings and position(s) of record and such settlement, "agree that they have no right to share in any component or aspect of the punitive damages collected by all other plaintiffs at the conclusion of this litigation pursuant to the September 16, 1996 judgment in favor of the mandatory punitive damages class" (Oesting letter at p. 2, ¶ 2);

b. However, Nautilus Marine Enterprises, Inc. and Cook Inlet Processing, Inc. would remain free, to attempt to pursue, via either separate action(s) and/or their "Robins Dry Dock" claims/causes of action, all recovery and/or further settlement regarding all other damages and claims/causes of action against the Exxon defendants that might be due Nautilus Marine Enterprises, Inc. and Cook Inlet Processing, Inc., including all compensatory damages and "punitive damages [not

so] collected...pursuant to [such] September 16, 1996 judgment." Id.

Accordingly, subject to these clarifications, pursuant to the terms and conditions of my letter of July 3, 2002, as addressed by Mr. Oesting's letter of July 12, 2002 and as clarified by this letter, I am willing to, and do, agree to such settlement on behalf of my clients Nautilus Marine Enterprises, Inc. and Polar Equipment Inc. d/b/a Cook Inlet Processors, Inc., and ask you to do likewise (by either acknowledging your agreement below and returning a copy of same to me, or acknowledging agreement to such settlement under separate cover) with said exchange of

Exhibit A Page 16 [PPW]

settlement letters constituting a binding settlement, to be further effectuated by formal documents encompassing the provisions of same.

Said settlement, if so confirmed and agreed, will conform to such correspondence and said clarifications and, in particular, ¶¶ A-D at pp. 2-3 of Mr. Oesting's letter of July 12, 2002:

A. All of [my] clients [Nautilus Marine Enterprises, Inc., Polar Equipment, Inc. d/b/a Cook

Inlet Processors, and, to the extent necessary, Phillip Paul Weidner, Ana Christina Weidner, Phillip Thor Weidner and the related parties, Avalon Leasing, Inc., M. Thomas Waterer as assignee of the claims of Larry Gray and Theodore Jewel] agree to dismiss with prejudice their appeals from Order Nos. 351 and 352 and to be bound by the terms and conditions of those Orders for all purposes;

B. All of [my] clients [will] execute formal releases as outlined in paragraph 6 of [my] letter [of July 3, 2002];

C. All Plaintiffs [will] execute mutual releases as set forth in paragraph 6 of [my] letter [of July 3, 2002]; and

D. All Plaintiffs agree to release and relinquish any and all claims of any nature whatsoever which they may have to Nautilus's or CIP's "Robins Dry Dock" claims for compensatory damages and the proceeds thereof.

If you agree with the above, and agree to settle as proposed in my letter of July 3, 2002, as addressed by Mr. Oesting's letter of July 12, 2002, and as clarified above, please so indicate in writing, or by signing below.

Thank you for your attention to this matter.

Sincerely,
WEIDNER & ASSOCIATES, INC.
Counsel for Nautilus Marine Enterprises, Inc.
and Polar Equipment, Inc. d/b/a Cook Inlet Processors, Inc.

/s/ 7/17/2002
Phillip Paul Weidner

ACCEPTED AND AGREED:

/s/ Date 7/17/2002
David W. Oesting
On Behalf of Plaintiffs' Committee, Including
All Attorney members of Same, and the Clients,
Plaintiffs and Class(es) and Class Members
They Represent, and all Plaintiffs and all Parties to
the Joint Prosecution Agreement

Exhibit A Page 17 [PPW]

cc: Nautilus Marine Enterprises, Inc.
Cook Inlet Processing, Inc.

Exhibit A Page 18 [PPW]

EXCERPT FROM: SETTLEMENT AGREEMENT BETWEEN EXXON AND THE NAUTILUS MARINE AND COOK INLET PROCESSING

This Settlement Agreement is made as of this 18th day of September, 2006, in Anchorage, Alaska, between, on the one hand, Exxon Mobil Corporation and Exxon Shipping Company, now Seariver Maritime Financial Holdings, Inc. (collectively "Exxon"); and, on the other hand, Nautilus Marine Enterprises, Inc., Waterkist Corporation, and M. Thomas Waterer ("NMI" as defined herein), and Polar Equipment, Inc. d/b/a Cook Inlet Processing ("CIP" as defined herein) (collectively the "Seafood Processors").

...

3.8 Notwithstanding anything to the contrary herein provided, nothing in the Final Judgment nor in this Settlement Agreement shall prevent CIP or NMI, from sharing: (a) in any punitive damages recovery against Exxon as a member of the Mandatory Punitive Damages Class, as defined in the following Orders: April 14, 1994 Order No. 204 - - Order Granting Conditional Final Approval and Certifying Mandatory Punitive Damages Class (Clerk's Docket No. 4856); April 15, 1994 Order No. 204 Supplement - - Final Certification of Mandatory Punitive Damages Class (Clerk's Docket No. 4857); and May 12, 1994 Order No. 204 Second Supplement - - Final Order on Mandatory Punitive Damages

Class (Clerk's Docket No. 5032); or (b) in the recovery of compensatory damages against Exxon by the Commercial Fishing Class pursuant to the Amended Judgment in the Action entered January 30, 1997; or (c) in the recovery of compensatory damages against Exxon by the Tender Settlement Class pursuant to the settlement approved by the Court in Order No. 366 on June 18, 2004;

3.9 Any releases of claims for punitive damages given to Exxon by the Seafood Processors in 1989 and 1990 are rescinded and set aside, and any claims for punitive damages assigned to Exxon by the Seafood Processors in 1989 and 1990 are reassigned and restored to them. Seafood Processors acknowledge and agree, in light of the District Court's certification of a Mandatory Punitive Damages Class as defined in Orders referenced in Paragraph 3.8, that they have no right to pursue their punitive damages claims except as members of the Mandatory Punitive Damages Class in whatever recovery the Mandatory Punitive Damages Class may ultimately obtain. Seafood Processors also specifically agree not to challenge or object to the referenced Orders creating the Mandatory Punitive Damages Class, and not to seek to opt out of the Mandatory Punitive Damages Class. Nothing in this paragraph shall alter or affect the releases of compensatory damages previously given by the Seafood Processors to Exxon.

...

DATED: __9/29___, 2006 PHILLIP PAUL WEIDNER AND ASSOCIATES

By_____/s/_____
Phillip P. Weidner
Attorneys for Seafood Processors

DATED: __9/29___, 2006 POLAR EQUIPMENT, INC., D/B/A COOK INLET PROCESSING

By_____/s/_____
Michael Shupe
President

DATED: ___9/29__, 2006 NAUTILUS MARINE ENTERPRISES, INC.

By_____/s/_____
Thomas Waterer
President and Chairperson of Board of Directors

DATED: ____9/29____, 2006 O'MELVENY & MYERS, LLP

By_____/s/_____
John F. Daum

Attorneys for Exxon Mobil Corporation and Exxon Shipping Company, now Seariver Maritime Financial Holdings, Inc.

DATED: __10/2__, 2006

EXXON MOBIL CORPORATION

By_____/s/_____

Michael F. Smith
Chief Attorney

DATED: _10/2__, 2006

EXXON SHIPPING COMPANY, now SEARIVER MARITIME FINANCIAL HOLDINGS, INC.

By_____/s/_____
Albert R. Galik
General Counsel

Phillip Paul Weidner
WEIDNER & ASSOCIATES, APC
330 L Street, Suite 200
Anchorage, Alaska 99501
(907) 276-1200
(907) 278-6571 Facsimile
pmaughan@weidnerjustice.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)CaseNo.A-89-095CI (HRH)
the EXXON VALDEZ) (Consolidated)
_____)
)
THIS DOCUMENT RELATES TO)
PLAINTIFFS COOK INLET PROCESSING)
INC., NAUTILUS MARINE ENTERPRISES,)
INC., AND EXXON)
)
_____)

MOTION FOR ORDER FOR PAYMENT

COMES NOW Plaintiff, Polar Equipment, Inc., d/b/a Cook Inlet Processing, Inc., (CIP), and hereby respectfully moves this for an Order that Cook Inlet Processing, Inc. (hereinafter, "CIP") and Nautilus Marine Enterprises, Inc. (hereinafter,

"NME") be paid the sums due pursuant to CIP's Notice and Demand and Presentment for Payment, namely sums due via reassigned cede back rights acquired by CIP and NME from defendant Exxon, which represent approximately 5% of the EVOS punitive damages proceeds, to wit, approximately $45 Million.

This motion is made on the grounds, as reflected by the record and said Notice and Demand and Presentment for Payment, said sums are due to CIP and NME.

Further, counsel for "ALL Plaintiffs", in reply to said Notice and Demand and Presentment for Payment, complain that notwithstanding the timely filing of the Presentment, no formal motion was allegedly made.

Accordingly, said formal motion, if necessary, is filed herewith.

RESPECTFULLY SUBMITTED this 27th day of November, 2009.
WEIDNER & ASSOCIATES, APC
Counsel Cook Inlet Processing

s/ Phillip Paul Weidner
Weidner & Associates, APC
330 L Street, Suite 200
Anchorage, AK 99501
Phone (907) 276-1200
Fax (907) 278-6571
Email:pmaughan@weidnerjustice.com
ABA 7305032

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2009, a copy of the foregoing was served electronically on: Thomas Amodio, Charles Coe, Michael Cohn, Peter Danelo, Suzanne Dimeff, Gergory Fisher, Samuel Fortier, Lloyd Miller, David Oesting, Douglas Serdahely, Bruce Gagnon, Edward Weigelt, Jr., Michael Hausfeld, Richard Helm, C. Michael Hough, Thomas Matthews, John B. Nielsen, Neil O'Donnell, Timothy Petumenos, A. William Saupe, Kevin P. Sullivan, Clay A. Young, John G. Young.

s/ Phillip Paul Weidner

Phillip Paul Weidner
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re	)
	)CaseNo.A-89-095CI (HRH)
the EXXON VALDEZ	) (Consolidated)
	)
THIS DOCUMENT RELATES TO PLAINTIFFS COOK INLET PROCESSING INC., NAUTILUS MARINE ENTERPRISES, INC., AND EXXON	)

MEMORANDUM OF POINTS OF AUTHORITIES BY COOK INLET PROCESSING, INC. IN SUPPORT OF MOTION FOR ORDER FOR PAYMENT

I. INTRODUCTION

It is now "the end of the day," for this 20 years of litigation, relating to the Exxon Valdez grounding in Prince William Sound in 1989, and the Exxon Valdez Oil Spill, (hereinafter EVOS). The U.S.

Supreme Court and Ninth Circuit, have now affirmed and issued mandates as to the punitive damages verdict and judgment regarding the award to the class (including interest), and the Court is the caretaker of the proceeds given its possession and control of the funds, subject to commercial claims and demand, and given its fiduciary duty to the class and as supervisor of the litigation, and the relevant and related proceeds, and settlements, and settlement proceeds, including ensuring appropriate distribution of said proceeds, and approval and enforcement of the subject settlement(s), and its duty to honor commercial rights and demands. As noted, the Court has these obligations in its fiduciary and supervisory capacity of this mandatory Class Action, a Class Action in which CIP and NME, who were State Court Plaintiffs seeking EVOS punitive damages under Alaska Law and Maritime Law, were required to join. The Court also has the same obligations of any fiduciary that is holding funds subject to distribution as to commercial claims.

The Court also has obligations to ensure that Settlements which have been presented to and approved by the Court in this matter are appropriately implemented, including the 2003 Plaintiffs' Committee Settlement and the 2006 Robin's Dry Dock Compensatory Damage Settlement with Exxon, as to CIP and NME's rights as to same. Thus, CIP and NME's current Notice, Demand, and Presentment for Payment must be honored. The Plaintiffs' Committee, and Lynn

Sarko/Administrator of the EQSF, have similar duties and obligations.

Although the Court issued Order No. 371 in the instant matter [Docket 8622], which was the subject of the Appeal to the Ninth Circuit, resulting in the decision In Re the Exxon Valdez, 2009 WL 2197038 (July 24, 2009), and those proceedings are still subject to soon to be filed Petition(s) for Writ(s) of Certiorari, the fact remains that the Court's obligations still exist as to the present posture of the case and current events and regarding said proceeds of the EVOS punitive damages judgment and related settlement(s) subject to said claims, and such claims of CIP and NME must be honored, implemented and fulfilled.

Given the fact, that is now apparent, that notwithstanding the representations that were made to the Ninth Circuit by the Plaintiffs' Committee and Exxon, to take the position that CIP and NME are to be denied and/or barred from asserting their rights, they, just as Exxon as to the Seattle Seven (11% cede back rights), Exxon as to Processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc., and Western Alaska Fisheries, (approximately $5 Million in cede back rights), are holders in due course as reassignees of the valid cede back rights, as proceeds of the 2006 settlement which must be honored, to wit, the approximately $45 Million that is being reserved as to those said rights.

In 2006, in the Plaintiffs' Committee Settlement, CIP and NME were induced to forego

certain litigation positions, by promises that they were fully released from, and freed from, and not bound by the Joint Prosecution/Joint Sharing Agreement even as to the 3% contribution to the attorneys fund.

They were promised they were 100% "stand alone" direct action plaintiffs/class members, to pursue their Robin's Dry Dock claims and other claims and could receive and fully retain all proceeds of same, (to include any after-acquired rights as proceeds of the Robin's Dry Dock Claims, i.e., the reassigned cede back rights), without any claim by any other party or the Plaintiffs' Committee. At that time, the related "cede back rights' resided in Exxon under the 1989/1990 Releases/Assignments, who were the "holders in due course" of same. As noted, Exxon then conveyed and reassigned their rights to CIP and NME as after acquired rights in 2006 as partial settlement proceeds.

That is, in 2006, CIP and NME were induced to forego vindicating their imminent jury trial rights to seek and receive hundreds of millions of dollars of compensatory damages (and punitive damages as to other EVOS related claims), with the settlement with Exxon. Those settlement proceeds, included $8.5 Million in cash (paid immediately), certain rights regarding litigation as to prejudgment interest and attorneys fees (as to which sums litigation is still ongoing), and the conveyance via the rescinding of the 1989/1990 releases, reassignments of the 1989/1990 cede back rights as blessed by this Court, to wit, conveyance of the cede

back rights for good and valuable consideration as partial 2006 settlement proceeds, to wit, after-acquired, i.e., post 2003 acquired, rights (which rights CIP and NME as holders in due course are now asserting and which sums are due). CIP and NME now thus "stand in the shoes of Exxon", as to those cede back rights and are "holders in due course" as to same, and this Court, the Plaintiffs' Committee and Lynn Sarko/Administrator of the EQSF have an obligation to honor and enforce said rights, given CIP and NME's standing as vested members of the mandatory Class, holders in due course presenting such rights for payment given this Notice, Demand, and Presentment, and as promisees/beneficiaries of the two referenced 2003 and 2006 Settlements.[1]

The current pleadings before this Court show that approximately $5 Million has been reserved as to Exxon's similar cede back rights regarding Processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc., and Western Alaska Fisheries, and those monies, notwithstanding Order 351 or 352, shall be paid to Exxon "off the top" and outside of the plans of allocution or distribution, irrespective of any

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[1] As noted, the issues concerning CIP and NME's rights to the proceeds of the 2006 Settlement as to prejudgment interest and attorneys fees are the subject of separate litigation before this Court and/or in Alaska State Court, and are not the subject of this pleading.

"overpayment" to Processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc., and Western Alaska Fisheries, or Orders 351 or 352 as modified. The similar reserve as to CIP and NME's 5%, pro rata share via the reassigned cede back rights is approximately $45 Million, and also should be paid forthwith to them. Accordingly, the Court must honor those rights and Order that the proceeds be conveyed and distributed to CIP and NME. The Plaintiffs' Committee and/or Lynn Sarko/Administrator of the EQSF must also honor such Presentment, Demand, and Notice and arrange for such payment any failure or refusal to do so will render them liable for same.

Doing so, is mandated by the record and law, and will moot the current proceedings at the Ninth Circuit and U.S. Supreme Court level as to same rights.

II. CIP AND NME ARE SIMILARLY SITUATED TO EXXON WITH RESPECT TO THEIR RIGHT TO "COLLECT" AT THE "END OF THE DAY" AS A "HOLDER IN DUE COURSE" OF THE RELEVANT "COMMERCIAL PAPER," AS BENEFICIARIES OF THE SUBJECT 2003 and 2006 SETTLEMENT(S), WHICH INCLUDES A RIGHT TO "COLLECT" THE RELATED PRO RATA SHARE OF EVOS PUNITIVE DAMAGES PROCEEDS AWARDED TO THE CLASS VIA THE PUNITIVE DAMAGES JUDGMENT VIA ASSIGNMENTS OF THE "CEDE-BACK" RIGHTS BLESSED BY THE NINTH CIRCUIT, AS

SETTLEMENT PROCEEDS OF THE 2006 SETTLEMENT

Exxon, via its *Motion of Defendants Exxon Mobil Corporation (D-1) and Exxon Shipping Company (D-2) For Payment Pursuant to Stipulation With Plaintiffs Regarding Processor Assignment Agreements* filed in this matter, on August 31, 2009, [Docket 9287], is seeking to enforce its similar cede back rights as to assignments given by four processors, (as proper settlement proceeds with such processors) and to do so "off the top."

Therein, Exxon is properly seeking its Due Process, Commercial Rights, and Settlement Rights, as blessed by the Ninth Circuit in In Re the Exxon Valdez, 229 F.3d 790 (9th Cir. 2000) and In Re Exxon Valdez, 239 F.3d 985 (9th Cir. 2001), to the cede-back proceeds. CIP and NME are entitled to the same rights and payment.

Counsel for the Plaintiffs Committee and/or Lynn Sarko/Administrator of the EQSF, are holding in escrow funds sufficient to cover CIP/NME's claims to their 5% pro rata share of punitive damages proceeds, via the reassigned cede-back rights. From the "principal" punitive damages proceeds distribution of approximately $437,500,000, a sum equal to approximately $22 million was held in escrow. That is, Pursuant to the Stipulation Reference Payment of Punitive Damages to Exxon Qualified Settlement Fund, Plaintiffs' Committee recognized that, as to those funds, at least approximately 5% of $437,500,000.00 should be

reserved for CIP and NME's claims, i.e. $21,875,000. See, Docket No. 8849. See, also, ¶ 5 of Declaration of Lynn Lincoln Sarko in Support of Lead Counsel's Application for an Order Distributing Exxon Qualified Settlement Funds to [Certain] Claimants and Their Attorneys, at 3, [Docket 8884].[2]

From the additional "punitive damages interest" proceeds, other funds were withheld to

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[2] That Declaration provided:

> 5. Of the $383,349,750.00 which was received from Exxon, $19,678,268.75 was distributed to the Chugach group of Native Corporations because of their "off the top" status, and $608,606.25 has been reserved for that group's 3% fund share, for a total of $20,286,875.00. $1,674,750.00 of the total was set aside for the Seattle Seven's share of the 3% fund. With direction from Lead Counsel, I then subtracted 5% of $437,500,000.00-$21,875,000.00-as a reserve for Cook Inlet Processors and Nautilus Marine, who maintain an appeal with the Ninth Circuit Court of Appeals, and who are arguing that, like the Seattle Seven and the Chugach Native Corporation group, they are entitled to an "off the top" distribution. (Emphasis added.)

equal a total amount in escrow for CIP and NME of approximately $45 million.[3]

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[3] Lynn Sarko states in his recent Affidavit:

> Various individual processors in the latter category have suggested that I ask the Court to modify its prior orders to permit a distribution to them. I have calculated the maximum gross amount that would be necessary to bring all processor claimants who have yet to recover their full final percent shares of signatory recoveries to be $4,677,759.55. At this time, given the pendency of processor appeals, I seek authority to reserve that amount pending further application to the Court. If the Court determines that they are entitled to all or part of the set aside at that time, a distribution can be made to them, and if not, the amount can be added to other amounts that I now anticipate will be the subject of a later punitive damages distribution, including the $70,000,000 that Exxon still owes plaintiffs in costs, and the money that has been set aside for Cook Inlet and Nautilus Marine, collectively over $45,000,000.

See, Declaration of Lynn Lincoln Sarko in Support of Lead Counsel's Seventh Punitive

That demonstrates that CIP and NME (just as Exxon) are entitled to the relevant pro rata shares of punitive damages "off the top" as holders in due course of the cede-back rights, to wit, the "commercial paper", i.e., settlement proceeds previously blessed by this Court, as to the valid rescinding of the 1989/1990 releases by CIP/NME to Exxon and its reassignment of the cede back rights as held to be enforceable in In Re the Exxon Valdez, 229 F.3d 790 (9th Cir. 2000) and In Re Exxon Valdez, 239 F.3d 985 (9th Cir. 2001).

III. THE ANSWER TO THE COURT'S RECENT QUESTION IN THE ORDER FROM CHAMBERS OF OCTOBER 9, 2009, AT DOCKET 9363 IS THAT BOTH EXXON (AS TO PROCESSORS SEA HAWK SEAFOODS, INC., COPPER RIVER FISHERMAN'S COOPERATIVE, KODIAK SALMON PACKERS, INC., AND WESTERN ALASKA FISHERIES CEDE BACK ASSIGNMENTS AND THEIR "CEDE BACK" STATUS) AND CIP/NME AS TO THE 2006 CEDE BACK REASSIGNMENTS OF THE 1989/1990 CEDE BACK RIGHTS AND RESCINDING OF THE 1989/1990 RELEASES ARE ENTITLED TO FULLY COLLECT, AS HOLDERS IN DUE COURSE OF SAID CEDE BACK RIGHTS

Damages Application Setting Aside Funds to Claimants in the Processor and Cannery Worker Claim Categories, at 4-5, Docket No. 9270. (Emphasis added.)

A. CIP and NME and Exxon Are All Holders In Due Course Of The Relevant Vested Cede Back Rights And Have A Right To Fully Collect Same.

The answer to the question by the Court set out in the Order from Chambers by U.S. District Judge H. Russell Holland, entered October 9, 2009, at Docket 9363 as to the subject cede back rights regarding Exxon, is relevant as to CIP/NME's right to collect as to their reassigned cede back rights. That is, said Order is indicative that CIP and NME are correct, as to the distinction concerning "collected by", and "awarded to" as it relates to the 2003 Plaintiffs' Committee Settlement and 2006 Exxon Robin's Dry Dock Settlement and proceeds of the EVOS[4] punitive damage verdict and judgment, especially in light of the due process rights of holder(s) in due course and promisees/beneficiaries of settlement to "collect" said proceeds at the "end of the day", if a proper "assignee" (such as CIP and NME) for good and valuable consideration of rights as proceeds of the 2006 settlement, (to which, they were promised they could fully retain in the 2003 settlement), including "cede back rights" is asserting same as to a particular "share of the punitive damages pie".

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[4] Exxon Valdez Oil Spill.

In particular, it is now apparent, at the "end of the day", to wit, the final distribution of proceeds pursuant to the EVOS, punitive damage verdict and judgment, as to the 1989 Prince William Sound Grounding of the Exxon Valdez, which has been affirmed on Appeal by the U.S. Supreme Court and Ninth Circuit, that concerning the "collection" of said proceeds, there is a basic due process distinction relating to "collected by" and "awarded to" as to said "proceeds". Thus, CIP and NME's Notice, Demand, and Presentment to "collect" same must be honored. That is, as to the "holder(s) in due course" of the relevant commercial paper, to wit, as to either the "share of the proceeds pie" to be directly "collected by" the Class Members represented by the Plaintiffs' Committee (parties to the Joint Prosecution/Joint Sharing Agreement) or the "shares of the proceeds pie" to be "collected" or taken "directly off the top", i.e., via certain "cede back rights" blessed by this Court in In Re the Exxon Valdez, 229 F.3d 790 (9th Cir. 2000), and In Re Exxon Valdez, 239 F.3d 985 (9th Cir. 2001), as to Exxon via the "Seattle Seven" 11% agreements or now as to Exxon as to the $5 Million regarding the Processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc., and Western Alaska Fisheries, or as to the Native Corporations (3%), that CIP and NME are entitled to their approximately 5% pro rata share to be "collected by" CIP and NME "off the top". They are the holders in due course of the cede back assignments that were possessed by Exxon in 2003

and reassigned to CIP and NME as good and valuable consideration via the rescinding/reassignment in 2006 of the 1989/1990 CIP/NME assignments/releases as proceeds of the 2006 "Robin's Dry Dock" compensatory damages claims settlements with Exxon. Thus, they now "stand in the shoes" of Exxon as to "Exxon's 2006 shoes" via such reassignments/rescinding of the 1989/1990 CIP/NME releases/assignments, to wit, post 2003 "after acquired rights", (which the U.S. District Court has ruled effective), in the 2006 Robin's Dry Dock Compensatory Damages Claims Settlement obtained as said "after acquired rights" post 2003 Plaintiffs' Committee Settlement.

Insofar as CIP and NME obtained those after acquired rights as 2006 settlement proceeds for good and valuable consideration and relied on same in foregoing their then imminent jury trial regarding potentially hundreds of millions of dollars of EVOS compensatory damages, to wit, obtained those "after acquired" rights post 2003 Plaintiffs' Committee Settlement, and they are the holder in due course of same, they (and their current Demand/Notice/Presentment for Payment), must be fully honored.

Moreover, CIP and NME are "100% stand alone" parties/class members/direct action plaintiffs as to such rights, as they were released from and are free of any obligations under the Joint Prosecution/Joint Sharing Agreement in 2003, even as to any 3% contribution to the Attorneys Fees Fund. They were fully promised (and relied on said

promises), in both the 2003 Plaintiffs Committee Settlement and the 2006 Exxon Robin's Dry Dock Compensatory Damages Settlement that they would and could fully receive, retain, and "collect" any proceeds of their Robin's Dry Dock claims/settlement which includes the "cede back" pro rata 5% "off the top", to be "collected by them" as such reassignees, as to proceeds "awarded to" the class, to now be "collected by" them as holders in due course as reassignees of the cede back rights as they "stand in the shoes of Exxon" regarding said "after acquired" cede back rights which shoes include the Seattle Seven 11%, (off the top), CIP and NME's 5%, (off the top), and the proceeds now subject to Judge Holland's current Order as to the assignment agreements from the Processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc., and Western Alaska Fisheries, to Exxon (approximately $5 Million).

That demonstrates that CIP and NME (just as Exxon) are entitled to the relevant pro rata shares of punitive damages "off the top" as holders in due course of the cede-back rights, to wit, the "commercial paper", i.e., settlement proceeds previously blessed by this Court, and held to be enforceable in In Re the Exxon Valdez, 229 F.3d 790 (9th Cir. 2000) and In Re Exxon Valdez, 239 F.3d 985 (9th Cir. 2001).

B. The Reserves Of $5 Million For Exxon, And $45 Million For CIP And NME Are Similar.

The instant events in this matter are significant, in that Exxon is acting pursuant to its rights, which rights CIP and NME also have, as similarly situated parties, with the same due process rights, i.e., rights to "cede back" collection of the EVOS punitive damages "awarded to" the class, as settlement proceeds.

The documents from the U.S. District Court which were the subject of the recent Ninth Circuit Motion to Supplement the record (Exhibit A herewith), coupled with the additional related documents enclosed herewith as Exhibit A', reflect that Exxon, pursuant to the relevant cede-back agreements, to wit, assignments relating to the processors Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc. and Western Alaska Fisheries, is asserting that, notwithstanding Order 352, (even as modified) it essentially "stands in the shoes" of said processors as to their certain pro rata shares of punitive damages as unaffected by the Joint Prosecution/Joint Sharing Agreement or Plan of Allocution or Distribution, [i.e., irrespective of any Joint Sharing Agreement or payment (or even overpayment) to the processors under the Plans of Allocation/Plans of Distribution] and accordingly, Exxon is seeking payment of the sum of $4,408,499.76 in its motion [Docket 9287 at 1], which claims and rights, as well as additional sums due in relation to said assignments/cede backs, are now the subject of a reserve for Exxon in the amount of $5,681,056.39 [Docket 9299 at 2]. This relates to the sums of $470,268,908.71 received July

1, 2009, and $383,349,750 received in August, 2008. Id. Exxon is asserting those rights as "standing in the shoes" of said processors, as to such pro rata shares of the punitive damages proceeds, irrespective of whether said processors have been "overpaid," as alleged by the Plaintiffs' Committee, as to the shares due said processors under the Joint Prosecution Agreement/Joint Sharing Agreement, Plans of Allocation and Distribution, and Order 351 or 352. Exxon is properly asserting a right to those proceeds "off the top." Moreover, the Plaintiffs' Committee has now agreed that the reserve will be available to pay Exxon's claims "off the top," if so ordered, irrespective of the distribution under the Joint Prosecution Agreement, Plans of Allocation and Distribution, and Matrix, as to processors, or if Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc. and Western Alaska Fisheries have been "over paid" under Order 351 or 352, the Joint Prosecution Agreement, and the Plans of Allocation and Distribution.

The Plaintiffs' Committee has agreed to the following in a proposed order as to distribution of the punitive damages proceeds:

> The Exxon Qualified Settlement Fund Administrator is hereby authorized and directed to reserve $5,681,056.39 of the litigation proceeds held in the Exxon Qualified Settlement Fund to cover Exxon's claims made in its August 31, 2009 Motion. Such reserve shall be set

> aside from the litigation proceeds as a whole and not from funds held for the benefit of any particular Claim Category. [I.e. "off the top] The availability of the reserve to satisfy Exxon's claims shall not be affected or lessened in any way if the Processor Claim Category, or any other Claim Category, or any individual claimant shall turn out to be overpaid.

See, Revised [Proposed Order on Seventh Application [Docket 9319-2] at 2. (Emphasis added.) That Order was pursuant to the "fact(s)" recited in the Stipulation for Modification of [Proposed] Orders for Distribution of Damages, [Docket 9319] to wit:

> WHEREAS the Supplement to the Seventh Application states that "the Exxon Qualified Settlement Fund Administrator is authorized and directed to reserve $5,681,056.39 of the litigation proceeds held in the Exxon Qualified Settlement Fund for potential application to cover Exxon's claims made in its August 31, 2009 Motion" but does not specify that the reserve shall come from the litigation proceeds as a whole and not from funds held for the benefit of any particular Claim Category; and

> WHEREAS, plaintiffs have confirmed to Exxon that it never was their intention that the availability of the reserve to cover Exxon's claims would be limited in any way by the fact the Processor Claim Category or any other Claim Category may have been overpaid – i.e., may have received more than their matrix share[.]

Stipulation at 3. (Emphasis added.)

IV. CIP AND NME HAVE FULL RIGHT(S) AS HOLDERS IN DUE COURSE AND BENEFICIARIES OF THE 2003 AND 2006 SETTLEMENTS VIA THEIR 2006 AFTER-ACQUIRED RIGHTS (POST 2003) TO ALL PROMISES AND PROCEEDS OF THE 2003 AND 2006 SETTLEMENTS AND THE COURT MUST RECOGNIZE, ACKNOWLEDGE, AND ENFORCE SAME, IN VIEW OF THIS NOTICE, DEMAND, AND PRESENTMENT FOR PAYMENT AND THE PLAINTIFFS'COMMITTEE AND LYNN SARKO/ADMINISTRATOR OF THE EQSF MUST DO LIKEWISE.

In that regard CIP and NME have similar standing as Exxon has, by virtue of their 2006 Compensatory Damages Robins Dry Dock Exxon Settlement proceeds, to wit the rescinding and reassignment from Exxon as to their "cede back" pro rata share of punitive damage proceeds (i.e., approximately 5%, which equals approximately $45

million as now similarly reserved by the Plaintiffs' Committee for Exxon). CIP and NME "stand in the shoes of Exxon, and are entitled to those proceeds as vested members of the class, not subject to, and totally released from the Joint Prosecution/Joint Sharing Agreement by virtue of the 2003 Plaintiffs' Committee Settlement, and as "holders in due course" of those cede back rights, as reassigned for good and valuable consideration as partial 2003 settlement proceeds.

Those cede-back rights were "after acquired rights," post-2003, which vested in CIP and NME in 2006 as good and valuable consideration as settlement proceeds, under the basic law of due process, contracts, and right to settlement proceeds. Those rights, to wit holders in due course of the reassigned cede-back rights, were promised to and acquired by CIP and NME as good and valuable consideration via rescinding/reassignments by Exxon, as to the 5% cede-back rights, promised and conveyed by Exxon for the 2006 Robins Dry Dock Compensatory Damages Settlements (when CIP and NME gave up their right to a jury trial as to such claims in reliance on said consideration) and those rights were promised to be free from any claim by the Plaintiffs' Committee in the 2003 Plaintiffs' Committee Settlement, and to vest solely in CIP and NME as such compensatory damages proceeds. They now have a right to collect same "off the top." The Court, Plaintiffs' Committee, and Lynn Sarko/Administrator of the EQSF must honor those rights and the Notice, Demand, and Presentment.

V. CONCLUSION

Accordingly, to enforce the 2003 and 2006 Settlement, honor CIP as the holder of funds subject to normal commercial paper notice, and Demand and Presentment by CIP and NME to the Court as supervisor of the litigation and obligation as "caretaker" of the "punitive damages proceeds" which were "awarded to" the class and to be "collected by" the "holder in due course", and as the Court supervising, and approving, and enforcing the relevant settlements, appropriate relief must be granted "at the end of the day": Such that, CIP and NME enjoy their basic constitutional due process rights as vested members of the class, and as promisees/beneficiaries of the 2003 and 2006 settlements, and are not discriminated against, and are on an equal par with the other class members, Exxon, the Native Corporations, and the Seattle Seven. The Plaintiffs' Committee and Lynn Sarko/Administrator of the EQSF must also honor same. That is, the cede-back agreements, reassignments, and 2003 and 2006 settlement proceeds and promises must be honored, and CIP and NME are entitled to "collect" the 5% pro rata cede back rights of the EVOS punitive damages proceeds "awarded to" the class, i.e., proceeds of the $45 million reserve "off the top," just as Exxon(11% of the proceeds), the Native Corporations (3%), and now Exxon as to Sea Hawk Seafoods, Inc., Copper River Fisherman's Cooperative, Kodiak Salmon Packers, Inc. and Western Alaska Fisheries, (regarding the additional approximately $5 million).

There is and was no just reason for denial of said relief. Indeed, any denial of such relief forthwith, works an injustice against CIP and NME, who have been discriminated against by this United States District Court, and the Plaintiffs' Committee in violation of their Federal Constitutional due process rights and rights as holder in due course, and as class members and as promisees/beneficiaries of the relevant settlements, and other rights. Relief should be granted in the interest of justice, to prevent further prejudice against CIP and NME as to their due process rights, and their rights to receive and fully retain the proceeds, "off the top" of their 2006 Robins Dry Dock Settlement with Exxon, and the 2003 settlement with the Plaintiffs' Committee, i.e., the 5% cede-back proceeds. The Court, Plaintiffs' Committee, Lynn Sarko/Administrator of the EQSF, must all honor same and the Court should so order.

RESPECTFULLY SUBMITTED this 27th day of November, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2009, a copy of the foregoing was served electronically on: Thomas Amodio, Charles Coe, Michael Cohn, Peter Danelo, Suzanne Dimeff, Gergory Fisher, Samuel Fortier, Lloyd Miller, David Oesting, Douglas Serdahely, Bruce Gagnon, Edward Weigelt, Jr., Michael Hausfeld, Richard Helm, C. Michael Hough, Thomas Matthews, John B. Nielsen, Neil O'Donnell, Timothy Petumenos, A. William Saupe, Kevin P. Sullivan, Clay A. Young, John G. Young.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In re)
)Case No.A-89-095CI (HRH)
the EXXON VALDEZ) (Consolidated)
_____)
)
THIS DOCUMENT RELATES TO)
ALL CASES)
_____)

SATISFACTION OF JUDGMENT

Whereas the parties anticipate that the District Court will, after remand from the Supreme Court and the Ninth Circuit, enter a judgment assessing punitive damages ("the Judgment") against Defendants Exxon Mobil Corporation and Exxon Shipping Company (collectively, "Exxon") in the principal amount of $507,500,000.00 (the "Principal Amount"); and

Whereas, the Ninth Circuit has ruled that the Principal Amount of the Judgment will bear post-judgment interest computed at 5.9% per annum, compounded annually, from September 24, 1996 until paid; and

Whereas, under the Stipulation and Order for Amendment of Plan of Allocation and Fixing of Seafood Processor' Share and Cede Back, filed 2/12/02, Exxon has elected to credit the 11% Processor Share against its obligation to pay any money judgment entered against it in this action by providing the required notices of its election and paying 3% of the Processor Share to the Exxon Qualified Settlement Fund for deposit into the Consolidated Case Fund; and

Whereas, on August 27, 2008, Exxon Mobil Corporation paid the Exxon Qualified Settlement Fund the sum of $383,349,750.00 in partial satisfaction of the Judgment as acknowledged in the Partial Satisfaction of Judgment executed by plaintiffs' counsel on that date; and

Whereas, on July 1, 2009, Exxon Mobil Corporation paid the Exxon Qualified Settlement

Fund the additional sum of $470,268,908.71 as acknowledged in the Partial Satisfaction of Judgment executed by plaintiffs' counsel on that date; and

Whereas, on December 9, 2009, Exxon Mobil Corporation paid the Exxon Qualified Settlement Fund of $71,844,995.51, which fully satisfied the remaining amount due under the Judgment (including interest through that date);

All Plaintiffs hereby acknowledge that, as of the date hereof, Exxon has fully satisfied the Judgment, including all interest due thereon.

Dated this 9th day of December, 2009 at Anchorage, Alaska.

LEAD COUNSEL for PLAINTIFFS
DAVIS WRIGHT TREMAINE LLP
By:_____/s/_____
David W. Oesting